



Universities Academic Staff Union (UASU), Moi University Chapter & 2 others v Moi University (Cause 20 of 2023) [2026] KEELRC 275 (KLR) (22 January 2026) (Judgment)

Neutral citation: [2026] KEELRC 275 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET

CAUSE 20 OF 2023

MA ONYANGO, J

JANUARY 22, 2026

BETWEEN

**UNIVERSITIES ACADEMIC STAFF UNION (UASU), MOI UNIVERSITY
CHAPTER 1ST CLAIMANT**

**KENYA UNIVERSITIES STAFF UNION (KUSU) MOI UNIVERSITY
CHAPTER 2ND CLAIMANT**

**KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTIONS,
HOSPITALS AND ALLIED WORKERS (KUDHEIHA) 3RD CLAIMANT**

AND

MOI UNIVERSITY RESPONDENT

JUDGMENT

1. Vide a Memorandum of Claim dated 3rd August 2023 and filed in court on the same day, the Claimants seek a declaration that the retirement notices issued by the Respondent to the Claimant’s members pursuant to the Moi University Statutes 2013 (Revised 2021) are null and void. The Claimants also prayed for costs.
2. The Claimants aver that at all material times to this suit the Respondent’s staff were, and continue to be, members of the Claimants.
3. They further aver that there are valid Recognition Agreements and Collective Bargaining Agreements between the Claimants and the Respondent, thereby vesting the Claimants with the mandate to represent the Respondent’s relevant employees.
4. The Claimants assert that they are dissatisfied with various governance decisions undertaken by the Respondent, including, but not limited to, the revision of the Moi University Statutes, 2013.



5. According to the Claimants, following the Respondent's revision of the University Statutes, they lodged a Cross-Petition in Eldoret ELRC Petition No. E016 of 2021 challenging the legality of the said revision and seeking nullification of the Revised Statutes.
6. It is the case of the Claimants that the validity of the Moi University Statutes, 2013 (Revised 2021) remains a live issue before this Honourable Court, pending the hearing and determination of the said Petition.
7. The Claimants further contend that the Moi University Statutes 2013 (Revised 2021) have not been gazetted as envisaged under section 23(2) of the *Universities Act*, 2012 yet the Respondent has commenced implementation of the impugned Revised Statutes before the gazettelement.
8. The Claimants aver that under the Moi University Statutes, 2013 as read with the applicable Collective Bargaining Agreements, the Terms of Service and the Trust Deeds governing the Moi University Provident Fund and the Moi University Pension Scheme, their members were required to retire on the 30th day of June following the attainment of the mandatory retirement age. They contend that the Revised Statutes seek to alter this position by fixing retirement date to be effective on the specific date when an employee attains the retirement age.
9. According to the Claimants, the Respondent's action of altering the date of retirement is not only causing a lot of confusion and suffering to the Claimants' members, but is affecting the engagement between its members and other stakeholders including the Moi University Pension Scheme and the Moi University Provident Fund.
10. The Claimants assert that their members have a legitimate expectation that they would retire on the 30th day of June, following the date when the employee attains the retirement age and that if the Revised Statutes are implemented, their members will be forced to retire early without any retirement benefits noting that the Pension Scheme and the Provident Fund are not bound to pay off the retirement benefits without a proper instrument to facilitate early pay outs.
11. It is the Claimants case that the Provident Fund and the Pension Scheme are required to invest the funds contributed for the benefit of their members and these investments are long term, taking into account the known retirement dates for the respective members being 30th June, hence any early call outs of the investments will negatively impact on the operations of the two institutions, jeopardizing the interests of the contributors.
12. In sum, the Claimants aver that the Respondent is altering the terms of employment mid-way to the detriment of their members.
13. In response, the Respondent filed a Reply to the Memorandum of Claim dated 1st September 2023, in which it averred that the revision of the Moi University Statutes, 2013 was not a purported process but a lawful one undertaken pursuant to the *Universities Act* No. 42 of 2012 and the Moi University Charter, 2013.
14. The Respondent contends that section 23 of the *Universities Act* empowers a university, through its Council or Senate, to make statutes and regulations to govern its affairs, and that section 26(1) of the Moi University Charter expressly authorizes the Council to make, amend, and revoke university statutes.
15. It is the Respondent's averment that the Claimants were invited to participate, and were directly involved, in the revision of the Moi University Statutes of 2013 because of the implications on the rights of the Claimant's members. That the Respondent has lawfully commenced implementation of



the Moi University Statutes , 2013 (Revised 2021) in line with the law as provided in the [Statutory Instruments Act](#) No. 23 of 2013 and the Moi University 2013 (Revised 2021).

16. The Respondent further contends that the Revised Statutes expressly provide for their commencement. In particular, Statute I (Citation and Application) stipulates that the amended statutes came into effect on 15th December 2021, while Statute XLI (Commencement and Transition) provides that the Revised Statutes and any amendments thereto shall commence on the date of approval by the University Council, unless otherwise specified.
17. The Respondent maintains that the Moi University Statutes, 2013 (Revised 2021) were approved by the University Council on the 15th December 2021 and that they came into effect on the same date and the Respondent commenced lawful implementation.
18. It is the Respondent's case the mandatory retirement age for public officers is clearly provided for in law particularly under section 80(1)(a) and (b) of the [Public Service Commission Act](#), and Regulation 70(1) of the Public Service Commission Regulations, which sets the mandatory retirement age at sixty (60) years, sixty-five (65) years for persons with disabilities, and such other age as may be determined by the Commission for lecturers and research scientists.
19. The Respondent asserts that, upon noting inconsistencies between existing law and the Moi University Statutes, 2013, the University Council deemed it necessary and lawful to revise the Statutes to harmonize them with applicable legislation and as a result, Clause 9 of Statute XXIX was introduced to align the retirement provisions with existing law.
20. On this basis, the Respondent avers that it issued the retirement notices in line with the law and in good time for the employees to prepare for retirement, thereby not causing any confusion or suffering to the Claimants' members.
21. It is further the Respondent's case that, as a public institution reliant on public funds, it is bound by Article 201 of [the Constitution](#) to ensure prudent and responsible use of public resources and that allowing employees to remain in service beyond the mandatory retirement age would impose an unjustified burden on taxpayers.
22. In response to the allegation by the Claimants that the Respondent altered the terms of employment of its members mid-way, the Respondent avers that no such alteration was made to the detriment of the Claimants' members. It is the Respondent's averment that the mandatory statutory retirement age remains sixty (60) years and that it did not vary the terms of employment, but merely aligned its Statutes with the existing law to ensure consistency and compliance.
23. In the end, the Court was urged to dismiss the Claimants claim with costs.
24. Pursuant to the directions of this court issued on 5th May 2025, the suit was disposed of by way of written submissions. Both parties filed their respective submissions.

The Claimants' submissions

25. In their submissions dated 16th October 2025, the Claimants identified the following issues for determination: -
 - i. Whether the amendment of the Statutes offends the right to fair administrative action
 - ii. Whether the Respondent's actions amount to an unfair labour practice
 - iii. Whether the University Statutes ought to have been gazetted prior to implementation



26. On the first issue, the Claimants submitted that the amendment of the Statutes constituted an administrative action and that the impugned amendment was unlawful and ultra vires the powers of the University Council. They submitted that the Council's mandate to make Statutes flows from the *Universities Act* and the University Charter, and any amendment affecting employment terms must strictly fall within the confines of those instruments.
27. According to the Claimants, the amendments made in the Moi University Statutes, 2013 by the Respondent purported to shorten existing contracts without lawful authority, thereby offending Article 47 of *the Constitution*. In support of this position, the Claimants relied on the case of *Kimani v Kenyatta University & another* (Petition E197 of 2023) [2025] KEHC 6602 (KLR)
28. The Claimants further submitted that fairness required consultation, an opportunity to be heard, and clear transitional arrangements where employees' service would terminate earlier than anticipated. They argued that the alteration of the retirement date was effected without the participation of the Claimants or their members. They denied the averment made by the Respondent that there was consultation and maintained that the Respondent has not tendered evidence of such participation in court.
29. On legitimate expectation, the Claimants submitted that the existing Statutes and long-standing practice of the University created an expectation that employees would retire on the 30th day of June following attainment of the retirement age. On this basis, it was asserted that the Claimants members planned their retirement based on this practice and that bringing forward the retirement date to the actual birthday unlawfully shortened their working life. In support of this position, the Claimants relied on the case of *Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others* [2015] eKLR.
30. On the second issue, the Claimants submitted that the Moi University Statutes, 2013 (Revised 2021) altered the retirement date from 30th June following attainment of the retirement age to the specific date of attaining that age. They argued that the resultant retirement notices would force members to retire early without access to retirement benefits, as the Pension Scheme and Provident Fund were under no obligation to pay benefits in the absence of appropriate instruments for early payout.
31. The Claimants further submitted that no evidence had been adduced to demonstrate negotiations or consultation leading to the revision of the Statutes. They asserted that the filing of a Cross-Petition in Eldoret ELRC Petition NO. E016 OF 2021 underscored their lack of participation.
32. The Claimants further submitted that the impugned revision adversely affected engagement with stakeholders, including the Moi University Pension Scheme and Provident Fund, whose Trust Deeds contemplate retirement benefits being payable on 30th June following attainment of the retirement age.
33. In addition, the Claimants submitted that the implementation of the Revised Statutes contravened Article 10 of *the Constitution* and would occasion grave hardship to their members by depriving them of livelihood, thereby exposing them to suffering.
34. The Claimants thus submitted that the Respondent's actions violated Articles 28, 41, and 50 of *the Constitution* and amounted to an unfair labour practice.
35. Lastly, on the issue whether the University Statutes ought to have been gazetted prior to implementation, the Claimants submitted that although the Respondent had power to make Statutes under the *Universities Act*, the Moi University Statutes, 2013 (Revised 2021) had not been gazetted as required by section 23(2) of the Act prior to implementation.



36. It is their submission that no evidence was produced to show submission of the Revised Statutes to the Cabinet Secretary for publication in the Kenya Gazette. In this regard, the Claimants submitted that failure to follow due process rendered the amendment and its implementation unconstitutional and unlawful. The court was urged to find that the University Statutes ought to have been gazetted before implementation and that failure to do so rendered them null and void.
37. In the end, the Claimants urged the Court to find that the Respondent's actions amounted to constitutional, statutory, and contractual violations. They sought for the orders prayed for in their Memorandum of claim.

The Respondent's Submissions

38. On its part, the Respondent in its submissions dated 26th June 2025, submitted that the revision of the Moi University Statutes, 2013 was necessitated by the need to align the Statutes with Articles 232(1) (b) and 201(d) of *the Constitution*, section 80(1)(a) and (b) of the *Public Service Commission Act*, and Regulation 70 of the Public Service Commission Regulations, 2020, which prescribe the mandatory retirement age of sixty (60) years in the Public Service.
39. The Respondent maintained that the revision was undertaken in accordance with section 23 of the *Universities Act*, section 26 of the Moi University Charter 2013, and the *Public Service Commission Act* and Regulations.
40. It is the Respondent's submission that the Claimants were invited to participate in the revision process and that, following consultations, Clause 9 of Statute XXIX was introduced to harmonize the retirement age with existing law and that the Revised Statutes were thereafter submitted to the Cabinet Secretary for publication in the Kenya Gazette.
41. The Respondent submitted that the Revised Statutes were approved by the University Council on 15th December 2021 and commenced on that date, and that internal memoranda were issued to notify affected parties of the amendments.
42. It was further submitted that retirement notices were issued well in advance to allow employees sufficient time to prepare for retirement and that many employees complied and retired as notified, having been paid their dues.
43. In response to the Claimants' averment that the Revised Statutes were intended to deny members their retirement benefits, the Respondent submitted that such assertions were speculative, unsubstantiated, and unsupported by evidence. It was contended that the retirement notices issued to the affected employees did not, either expressly or impliedly, indicate any intention on the part of the Respondent to withhold or delay payment of retirement benefits.
44. The Respondent further submitted that the Pension Scheme and Provident Fund are distinct legal entities and had not lodged any complaint challenging the Revised Statutes, and that the Claimants could not purport to litigate on their behalf.
45. It is the Respondent's submission that retaining employees beyond the mandatory retirement age would be uneconomical and contrary to the prudent use of public funds as required by Articles 201(d) and 232(1)(b) of *the Constitution* and further, that permitting retirement beyond the statutory age would impose an unsustainable wage burden on public resources and create administrative confusion, particularly given that some employees had already retired pursuant to the Revised Statutes.



46. The Respondent maintained that the terms of employment were not altered to the detriment of the Claimants' members, and asserted that the mandatory retirement age of sixty (60) years is statutory and that the revision merely harmonized the University Statutes with existing law.
47. Consequently, the Respondent urged the Court to find that the Claimants had failed to establish their case and to dismiss the claim with costs.

Determination

48. Upon carefully considering the pleadings, the rival submissions and the authorities cited by the parties, the issues that arise for determination are: -
 - i. Whether the amendment of the Moi University Statutes, 2013 (Revised 2021) violated the Claimants' right to Fair Administrative Action
 - ii. Whether the Respondent's actions amounted to an unfair labour practice
 - iii. Whether the Revised Statutes were required to be gazetted prior to implementation

Whether the amendment of the Moi University Statutes, 2013 (Revised 2021) violated the Claimants' right to Fair Administrative Action

49. It is not in dispute that the revision of the Moi University Statutes, 2013 (Revised 2021) constituted an administrative action within the meaning of Article 47 of *the Constitution* and the *Fair Administrative Action Act*, 2015. Administrative action, by definition involves the exercise of public power or discretion that affects the rights, interests, or legitimate expectations of individuals or groups.
50. It is trite law that administrative action must meet the threshold of lawfulness, reasonableness, procedural fairness, and respect for legitimate expectation.
51. The action complained of by the Claimants is the Respondent's revision of the Moi University Statutes, 2013 (Revised 2021). They aver that the revision directly impacted their members' terms of employment, particularly by altering the long-established retirement date. According to the terms of service all employees retiring during the year left service on the 30th of June following the date of attaining retirement age. The effect of the amendment of the Statutes was that retirement took effect on the actual date of attaining retirement age.
52. They have argued that this sudden change was implemented without meaningful consultation or participation and without any transitional arrangements to mitigate the impact of the revision on the affected employees.
53. According to the Claimants, the alteration disrupted their members' legitimate expectations, retirement planning, and access to accrued retirement benefits thereby causing uncertainty and hardship.
54. On the other hand, the Respondent has contended that the revision of the Moi University Statutes, 2013 (Revised 2021) was undertaken lawfully and in accordance with the powers conferred under section 23 of the *Universities Act*, 2012 and section 26 of the Moi University Charter, 2013.
55. The Respondent asserted that the Claimants were invited to participate in the revision process and that their views were duly considered, particularly in relation to Clause 9 of Statute XXIX which harmonized the retirement age with existing public service laws. The Respondent further submitted that the revision was necessary to align the University's internal statutes with statutory provisions



governing mandatory retirement so as to ensure consistency with the existing laws particularly, Regulation 70 of the Public Service Commission Regulations, 2020.

56. The court is therefore called upon to examine whether, notwithstanding the Respondent's statutory mandate to revise the Moi University Statutes, the process leading to the amendment met the constitutional and statutory threshold of fair administrative action, particularly with regard to consultation, procedural fairness, and the protection of legitimate expectations.
57. The court has analyzed the material placed before it at length. While the Respondent asserted that the Claimants were invited to participate in the revision of the Statutes, no cogent evidence was tendered to demonstrate the nature, extent, or outcomes of such participation. In particular, there was no record of consultative meetings, minutes, memoranda of engagement, or documented feedback to show that the Claimants' views were meaningfully considered prior to the adoption and implementation of the Revised Statutes.
58. In the absence of demonstrable evidence of meaningful consultation, this court is unable to find that the Respondent satisfied the procedural fairness requirements contemplated under Article 47 of *the Constitution* and section 4 of the *Fair Administrative Action Act*. The mere assertion that stakeholders were involved, without supporting material, is insufficient where the impugned decision has far-reaching consequences on employees' accrued rights and legitimate expectations.
59. Furthermore, the Respondent did not place before the court any transitional framework to cushion employees who were already in service and approaching retirement under the pre-existing regime. The abrupt shift of the retirement date from the 30th day of June following attainment of the mandatory retirement age to the actual date of attaining that age had the effect of shortening the affected employees' service period, thereby interfering with their settled retirement planning.
60. This court is persuaded that the long-standing practice embodied in the Moi University Statutes, 2013, the applicable Collective Bargaining Agreements, and the Terms of Service created a legitimate expectation that retirement would occur on the 30th day of June following attainment of the mandatory retirement age. Such expectation could not lawfully be defeated without prior notice, consultation, and reasonable transitional arrangements, even where the Respondent was acting within its statutory mandate.
61. While this court appreciates that it is within the mandate of the Respondent to revise its Statutes in order to align them with prevailing statutory provisions, such mandate must at all times be subject to *the Constitution*, the principles of fair administrative action, and the obligation to respect accrued rights and legitimate expectations of employees already in service.
62. In the court's view, the long-standing practice embodied in the Moi University Statutes, 2013, the applicable Collective Bargaining Agreements, and the Terms of Service created a legitimate expectation that retirement would occur on the 30th day of June following attainment of the mandatory retirement age. Such expectation could not lawfully be defeated without prior notice, consultation, and reasonable transitional arrangements, even where the Respondent was acting within its statutory mandate. The Respondent's decision-making process, though ostensibly anchored in statutory compliance, failed to meet the constitutional threshold of fairness and reasonableness required of administrative action as it negatively affected the legitimate expectations of the Claimants' members.
63. Accordingly, this court finds and holds that the amendment and implementation of the Moi University Statutes, 2013 (Revised 2021), as applied to the Claimants' members who were already in service, violated Article 47 of *the Constitution* and the *Fair Administrative Action Act*, 2015.



Whether the Respondent's actions amounted to an unfair labour practice

64. Article 41 of *the Constitution* guarantees every worker the right to fair labour practices. The Claimants argued that the alteration of the retirement date constituted a unilateral variation of the terms of employment and as such, amounted to an unfair labour practice.
65. From the pleadings on record, it is not in dispute that the Revised Statutes had the effect of altering the retirement date of employees, shifting it from the 30th day of June following attainment of the mandatory retirement age to the exact date on which an employee attains retirement age. This alteration, constituted a fundamental change to the terms and conditions of employment, which ought not to have been effected without engagement through collective bargaining mechanisms.
66. In my view, the Respondent's actions of altering the retirement date of employees undermined the collective bargaining framework and the rights of the affected employees thereby offending the constitutional guarantee of fair labour practices.

Whether the Revised Statutes were required to be gazetted prior to implementation

67. Section 23 of the *Universities Act* provide as follows: -

“ 23. Statutes

1. Subject to this Act and to the Charter a University Council or Senate may and where required by this Act to do so shall, make such statutes and regulations as it considers appropriate to regulate the affairs of the University.
2. A University Council shall, as soon as practicable and in any event not later than three months after the making of a statute or regulation under this section submit it to the Cabinet Secretary for publication in the Gazette”

68. The language of the provision is couched in mandatory terms and imposes a statutory obligation upon a university to ensure publication of its statutes as a condition for their legal validity and enforceability.
69. Further, section 2 of the *Statutory Instruments Act*, No. 23 of 2013 defines a statutory instrument to as follows:

“ any rule, order, regulation, direction, form, tariff of costs or fees, letters patent, commission, warrant, proclamation, by-law, resolution, guideline or other statutory instrument issued, made or established in the execution of a power conferred by or under an Act of Parliament under which that statutory instrument or subsidiary legislation is expressly authorized to be issued.”

70. University statutes are statutory instruments within the meaning of section 2 of the *Statutory Instruments Act*, No. 23 of 2013, as they are instruments made in the exercise of power conferred by an Act of Parliament. As such, they cannot acquire legal force until they are published in the Kenya Gazette in accordance with section 11(1) of the *Statutory Instruments Act* which provides: -

Statutory Instruments Act

11. Laying of statutory instruments before Parliament



- (1) Every Cabinet Secretary responsible for a regulation-making authority shall within seven (7) sitting days after the publication of a statutory instrument, ensure that a copy of the statutory instrument is transmitted to the responsible Clerk for tabling before the relevant House of Parliament.
 - (2) Notwithstanding subsection (1) and pursuant to the legislative powers conferred on the National Assembly under Article 109 of *the Constitution*, all regulation making authorities shall submit copies of all statutory instruments for tabling before the National Assembly.
 - (3) The responsible Clerk shall register or cause to be registered every statutory instrument transmitted to the respective House for tabling or laying under this Part.
 - (4) If a copy of a statutory instrument that is required to be laid before the relevant House of Parliament is not so laid in accordance with this section, the statutory instrument shall cease to have effect immediately after the last day for it to be so laid but without prejudice to any act done under the statutory instrument before it became void.
71. This provision, in my view, presupposes prior publication in the Gazette and reinforces the principle that gazettelement is a prerequisite to any subsequent legal processes, including parliamentary scrutiny.
72. While the Respondent contended that the Revised Statutes were submitted to the Cabinet Secretary for publication, no evidence was placed before this court to show that gazettelement had occurred prior to implementation. Approval by the University Council alone cannot substitute the statutory requirement of publication.
73. Section 11(4) further states that statutory instrument that has not complied with the provisions of the section shall cease to have effect immediately after the last day for it to be so laid but without prejudice to any act done under the statutory instrument before it became void
74. In the absence of gazettelement, the Revised Statutes could not lawfully acquire binding force capable of altering existing employment terms. Their implementation prior to publication was therefore premature and unlawful.
75. In light of the foregoing, the Claimants have established their case on a balance of probabilities.
76. Accordingly, a declaration is hereby issued that the retirement notices issued by the Respondent to the Claimant's members pursuant to the Moi University Statutes 2013 (Revised 2021) are null and void.

DATED, SIGNED AND DELIVERED VIRTUALLY

THIS 22ND DAY OF JANUARY, 2026.

M. ONYANGO

JUDGE

