



**University Academic Staff Union (UASU) Executive, Kenyatta  
University Chapter & another v Kinoti & 3 others (Civil Application  
E534 of 2021) [2022] KECA 868 (KLR) (22 July 2022) (Ruling)**

Neutral citation: [2022] KECA 868 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E534 OF 2021  
HM OKWENGU, S OLE KANTAI & A MBOGHOLI-MSAGHA, JJA  
JULY 22, 2022**

**BETWEEN**

**UNIVERSITY ACADEMIC STAFF UNION (UASU) EXECUTIVE, KENYATTA  
UNIVERSITY CHAPTER ..... 1<sup>ST</sup> APPLICANT**

**UNIVERSITY ACADEMIC STAFF UNION (UASU) SECRETARY, KENYATTA  
UNIVERSITY CHAPTER ..... 2<sup>ND</sup> APPLICANT**

**AND**

**FRANKLINE KABURU KINOTI ..... 1<sup>ST</sup> RESPONDENT**

**CRISPUS KOINANGE WAWIRE ..... 2<sup>ND</sup> RESPONDENT**

**ANTHONY WANYONYI WASENA ..... 3<sup>RD</sup> RESPONDENT**

**MOSES ONYANGO OPIYO ..... 4<sup>TH</sup> RESPONDENT**

*(An application for stay of execution of the judgment of the Employment & Labour  
Relations Court of Kenya at Nairobi (Rika, J) dated 20th August, 2021 in ELRC at Nairobi  
Petition No E093 of 2021, Consolidated with ELRC at Nairobi Petition No E043 of 2021)*

**RULING**

- [1] The motion before us is connected to Civil Application No. E498 of 2021 in which we have delivered our ruling today. The two applicants who are the Executive and the Secretary of University Academic Staff Union (UASU) Kenyatta University Chapter (KU Chapter) were the 2<sup>nd</sup> and 3<sup>rd</sup> respondents in Civil Application No. E498 of 2021 while the four respondents were 6<sup>th</sup> 7<sup>th</sup> 8<sup>th</sup> and 9<sup>th</sup> respondents in the same matter.



- [2] Both Civil Application No. E498 of 2021 and the current motion arise from a judgment and decree of the ELRC at Nairobi (Rika, J.) delivered on 20<sup>th</sup> August, 2021 in Petition No. E043 of 2021 consolidated with Petition No. E093 of 2021. In that judgment, the ELRC declined to grant the orders sought in Petition No. E093 of 2021 and allowed Petition No. E043 of 2021. The court further directed the appellants to update the UASU-KU Chapter's voters' register, and upon inspection of the register by members, hold fresh elections within 60 days of that judgment.
- [3] Just as in Civil Application No. E498 of 2021, the subject of the present application, is the updating of the KU Chapter Register and the fresh elections ordered by the ELRC, which the applicants herein seek to stop through orders of stay of execution of the orders, and judgment of 20<sup>th</sup> August, 2021 pending the hearing of their appeal against that judgment. The Ruling in this matter should therefore be read mutatis mutandis with the Ruling in Civil Application No. E498 of 2021.
- [4] The applicants maintain that they have an arguable appeal that may be rendered nugatory if the orders sought are not issued. They rely on an affidavit sworn by Dr. George Lukoye Makokha (Dr. Mahokha), who claims to be the current registered Secretary of the UASU-KU Chapter. This affidavit is identical to the affidavit that was sworn by Dr Makokha in support of the motion in Civil Application No. E498 of 2021. The issues raised in this motion are therefore identical to the issues raised in Civil Application No. E498 of 2021. Mr. Odhiambo learned counsel who appeared for the applicants conceded as much.
- [5] The applicants filed written submissions and supplementary written submissions as well as a list of authorities. Mr. Odhiambo orally highlighted the written submissions adding that contempt proceedings have been initiated against the applicants in the ELRC on the grounds that they have failed to organize the elections as ordered by the ELRC and therefore they stand the risk of suffering irreparable loss. Counsel submitted inter alia that there is a vacuum in the leadership of the KU Chapter as a result of the orders of the ELRC; that members of the Union are not getting effective representation, and that the appeal is arguable as there is an issue relating to the validity of the elections. He, therefore, urges the Court to grant the orders sought so that the applicants can continue running the affairs of the union.
- [6] Ms. Masaki learned counsel who appeared for the respondents, adopted the submissions that they had filed in Civil Application No. E498 of 2021. Kenyatta University which was named as an interested Party also filed a replying affidavit through its counsel.
- [7] We have carefully considered the motion before us, the applicant's submissions, authorities cited in support thereto, as well as the oral submissions.
- [8] The applicants' motion is anchored on a notice of appeal that they have filed. However, as already stated, the motion raises the same issues as the motion in Civil Application No. E498 of 2021 in which the applicants herein were named as 2<sup>nd</sup> and 3<sup>rd</sup> respondents. The issues now being raised have already been addressed by this Court in the previous application. Of interest is that the applicants did not appear nor filed any reply in Civil Application No. E498 of 2021. They therefore did not participate in that application and neither supported nor opposed the motion, even though the orders sought were similar to the orders that they now seek.
- [9] In our view the applicants have not raised any new issue that would justify this Court departing from the position already taken in Civil Application No. E498 of 2021. As per this Court's decision in *Multimedia University & Another vs. Professor Gitile N. Naituli* (2014) eKLR; and *Stanley Kangethe Kinyanjui v. Tony Ketter & 5 Others* (2013) eKLR, the applicants' motion having been brought under Rule 5(2)(b) of the *Court of Appeal Rules*, the twin requirements of arguability and the nugatory aspect must be satisfied.



[10] For reasons that we have stated in Civil Application No. E498 of 2021, the applicants have only met the requirement of arguability, but have not satisfied this Court that their intended appeal would be rendered nugatory. As the applicants had to satisfy the twin requirement of arguability and the nugatory aspect, this motion fails.

It is accordingly dismissed with costs.

**DATED AND DELIVERED AT NAIROBI THIS 22ND DAY OF JULY, 2022.**

**HANNAH OKWENGU**

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**JUDGE OF APPEAL**

**S. ole KANTAI**

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**JUDGE OF APPEAL**

**A. MBOGHOLI MSAGHA**

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**JUDGE OF APPEAL**

*I certify that this is a true copy of the original*

*Signed*

**DEPUTY REGISTRAR**

