



**Itolongo v Vice Chancellor of Kenyatta University (Petition  
E153 of 2022) [2025] KEELRC 224 (KLR) (31 January 2025) (Ruling)**

Neutral citation: [2025] KEELRC 224 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION E153 OF 2022**

**SC RUTTO, J**

**JANUARY 31, 2025**

**IN THE MATTER OF: ARTICLES 2; 3; 10; 20; 21; 22; 23, 41; 47, 48, 50; 73;  
159; 162; 165; 232 AND 258 OF THE CONSTITUTION OF KENYA, 2010.**

**IN THE MATTER OF: THE ALLEGED VIOLATION OF ARTICLES 3;  
10; 21, 35; 47; 73 AND 232 OF THE CONSTITUTION OF KENYA, 2010.**

**IN THE MATTER OF: THE ALLEGED VIOLATION OF RIGHTS AND  
FUNDAMENTAL FREEDOMS IN ARTICLES 35  
AND 47 OF THE CONSTITUTION OF KENYA, 2010.**

**IN THE MATTER OF: THE ALLEGED VIOLATION OF SECTIONS 3, 4, 5, 6, 7,  
8, 9 AND 11 OF THE ACCESS TO INFORMATION ACT OF 2016; SECTION  
41 OF THE LABOUR AND RELATIONS ACT OF 2007 AND SECTIONS 4;  
5; 6; 7 AND 11 OF THE FAIR ADMINISTRATIVE ACTION ACT OF 2015.**

**IN THE MATTER OF: FAILURE TO PROVIDE THE REPORT ON REFORMS  
AND RESTRUCTURING OF KENYATTA UNIVERSITY UPON REQUEST.**

**IN THE MATTER OF: FAILURE TO ENSURE TRANSPARENCY AND ACTIVE  
INVOLVEMENT BY KENYATTA UNIVERSITY STAFF AND THE GENERAL  
PUBLIC IN THE REFORMS AND RESTRUCTURING OF KENYATTA UNIVERSITY.**

**BETWEEN**

**DR WILFRIDA ITOLONGO ..... PETITIONER**

**AND**

**THE VICE CHANCELLOR OF KENYATTA UNIVERSITY ..... RESPONDENT**



## RULING

1. What comes up for determination is the issue of costs following the withdrawal of the Petition dated 18<sup>th</sup> August 2022 by the Petitioner.
2. Perhaps I should start by tracing the genesis of this matter. The Petitioner herein, Dr. Wilfrida Itolondo moved the Court vide the instant Petition dated 18<sup>th</sup> August 2022 seeking a number of declaratory reliefs and orders. The gist of the Petition was that the Respondent had failed to involve the Petitioner and other employees of Kenyatta University in the formulation of the Report on Reforms and Restructuring at Kenyatta University. The Petitioner further averred that the said Report was being implemented in secrecy without official communication to her, the employees of Kenyatta University and the general public.
3. Contemporaneously filed with the Petition, was the Petitioner's Notice of Motion brought under a Certificate of Urgency seeking an order to stay the ongoing implementation of the Report on Reforms and Restructuring of Kenyatta University pending hearing and determination of the Petition.
4. The Respondent challenged the Petition and the Notice of Motion through a Notice of Preliminary Objection dated 30<sup>th</sup> September 2022 in which it contended inter alia, that this Court lacked jurisdiction to entertain, hear or determine the Petition.
5. The Respondent further filed a Further Affidavit sworn on 3<sup>rd</sup> October 2022 by Prof. Joseph Ngeranwa, the then acting Vice-Chancellor (Administration).
6. The Application was canvassed by way of written submissions and in a Ruling delivered on 14<sup>th</sup> April 2023, the Court disallowed the Petitioner's Notice of Motion and overruled the Respondent's Notice of Preliminary Objection.
7. The Respondent being dissatisfied with the decision of the Court, filed a Notice of Appeal dated 25<sup>th</sup> April 2023 and subsequently, an Application dated 11<sup>th</sup> May 2023, seeking an order to stay proceedings pending hearing and determination of its intended appeal.
8. On 24<sup>th</sup> April 2024, parties compromised the Respondent's Application dated 11<sup>th</sup> May 2023, thereby staying further proceedings in this Court pending hearing and determination of the Respondent's Appeal before the Court of Appeal.
9. Vide a letter dated 26<sup>th</sup> June 2024 addressed to the Deputy Registrar of this Court, the Petitioner indicated her intention to withdraw the Petition on grounds that there were some developments at the Court of Appeal hence she was apprehensive that the Appeal may never be determined anywhere in the near future. In her view, this was the intention of the Counsels for the Respondent. She further stated that there was a change of leadership at Kenyatta University and most of the prayers had been overtaken by events and others may not be implemented because of the delay.
10. Subsequently, the Petitioner filed a Notice of Withdrawal dated 6<sup>th</sup> November 2024, in which she indicated her intention to withdraw the Petition on the following grounds:
  1. The prayers have been overtaken by events.
  2. A lot of restructuring has taken place at Kenyatta university which will be difficult to undo even if the Judgment was to be delivered in favour of the Petitioner.



11. When the matter came up for mention on 12<sup>th</sup> November 2024, the Respondent's Counsel, Ms. Makangani, told the Court that they had no objection to the withdrawal of the Petition save that they were under instructions to pursue the costs of the suit.
12. Consequently, the Court directed both parties to file written submissions with respect to the issue of costs. Both parties complied and I have considered their written submissions.

### **Submissions**

13. On her part, the Petitioner has submitted that she made a lot of efforts to ensure that the Petition is expedited. That since she had no control over the operations of the Court, the efforts did not bear any fruit and hence the prayers were overtaken by events.
14. She further argued that she had no alternative but make the decision to withdraw the Petition and that awarding costs would be punishing her for a situation that was beyond her control. In support of the Petitioner's position, she has placed reliance on the decision in Supreme Court Petition No. 16 (E019 of 2022) Oscar Oluoch Ouma Abote vs Loice Akoth Kawaka & 4 others.
15. The Petitioner has further argued that she moved to this Court under Articles 22 and 258 which touch on public interest. On this score, she invited the Court to consider the determination in the case of Amoni Thomas Amfry and Another vs the Minister for Lands and Another (2013) eKLR.
16. Submitting in favour of the award of costs, the Respondent has argued that having incurred expenses in defending against a Petition that was eventually withdrawn, an award of costs is justified.
17. Referencing the cases of Feisal Hassan & 2 others vs Public Service Board of Marsabit County & another [2016] eKLR and Dindi Oscar Okumu vs Robert Pavel Oimeke & 5 others [2021] eKLR, the Respondent has posited that the Petitioner's actions did not align with the core principles of genuine public interest litigation.
18. In the same vein, the Respondent has submitted that the reliefs sought centered on the internal restructuring of Kenyatta University and were not directed at addressing any widespread societal wrongs or protecting the rights of a vulnerable class of people. To this end, the Respondent maintains that the Petitioner's claims were primarily administrative and lacked any tangible benefit to the broader public. In the Respondent's view, by pursuing the Petition, the Petitioner not only misused valuable judicial time and resources but also imposed significant and avoidable costs on the Respondent.
19. The Respondent further submitted that the key requirement in public interests litigation is that the case must be initiated to protect the legal rights of the public at large, not for the advancement of the litigant's private interests or isolated grievances.
20. According to the Respondent, the restructuring and internal administrative changes at Kenyatta University, which formed the basis of this Petition, are inherently managerial issues and do not bear a direct impact on the rights or interests of the general public. It is the Respondent's view that the Petitioner has failed to demonstrate how the broader Kenyan public would benefit from the reliefs sought.

### **Analysis and Determination**

21. The basic rule on attribution of costs is that costs follow the event. As was held by the Supreme Court in the case of Jasbir Singh Rai and Three Others vs Estate of Tarlochan Singh Rai and Four Others, Petition No. 4 of 2012, there is no prescribed definition of any set of good reasons that can justify a court's departure, in awarding costs, from the general rule, costs follow the event. The Apex Court



further reckoned that an examination of evolving practices shows that matters in the domain of public interest litigation tend to be exempted from the award of costs.

22. According to the Petitioner, she brought the Petition on her own behalf and on behalf of public interest hence the reason she did not request for costs.
23. On the other hand, the Respondent has argued that the Petitioner's claims lack a compelling public interest justification. In this regard, the Respondent has maintained that the reliefs sought by the Petitioner were neither designed to redress a systemic injustice nor to advance a significant legal principle that would benefit the Kenyan populace. That instead, the focus of the Petition remained confined to specific administrative operations of the University, which do not warrant classification as matters of public concern.
24. The Court in *John Wekasa Khaoya vs Attorney General*, High Ct. Pet. No. 60 of 2012 set out factors to guide the filing of causes in the public interest as follows: "Let me emphasize that where an application for exemption is premised on the fact that the matter is to promote public interest, then two issues must be established, to wit, 1) the intended suit must be public litigation and 2) should not be aimed at deriving any personal gain to the applicant."
25. I have considered the declaratory reliefs sought in the Petition and note that in as much as the same may not have an impact on the general public and all Kenyans, they affect a considerable segment of the population who are members of staff of Kenyatta University. Indeed, it is notable that as crafted, the reliefs sought by the Petitioner are not personal in nature.
26. In light of the foregoing, it is this Court's view that the Petition falls within the realm of public interest litigation.
27. Further to the foregoing, the Court has considered the reasons advanced by the Petitioner for the withdrawal of the Petition and note that the same were largely attributable to the delay in prosecuting the Petition.
28. The Court has also paid due consideration to the Ruling delivered on 6<sup>th</sup> December 2024 by the Court of Appeal in Civil Application No. Nai E487 of 2023; *Dr. Wilfrida Itolondo vs the Vice Chancellor of Kenyatta University*, with respect to the issue of costs. Notably, the said Application was filed by the Petitioner herein in the Appeal which emanated from the Ruling delivered by this Court on 14<sup>th</sup> April 2023.
29. In the Ruling delivered by the Court of Appeal, the learned Judge opined that it would be prejudicial to condemn the applicant to pay costs yet she found herself in the position complained of due to circumstances beyond her control. As such, the Court ordered each party to bear their own costs.
30. In view of the similarity of the reasons advanced for the withdrawal of the Application before the Court of Appeal and the Petition herein, I am inclined to follow the decision of the Court of Appeal.
31. Consequently, and in the interest of justice, each party shall bear their own respective costs in this matter.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 31<sup>ST</sup> DAY OF JANUARY, 2025.**

**STELLA RUTTO**

**JUDGE**

In the presence of:

For the Petitioner In person



For the Respondent Mr. Oduor instructed by Mr. Thuo

Court Assistant Millicent

## **ORDER**

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court had been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

