



REPUBLIC OF KENYA



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**Itolondo v Kenyatta University (Petition E098 of 2024)
[2025] KEELRC 484 (KLR) (21 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 484 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E098 OF 2024**

B ONGAYA, J

FEBRUARY 21, 2025

**IN THE MATTER OF ARTICLES 2, 3, 4, 10, 22, 23, 30, 41, 43,
47, 48, 50, 73, 159, 160, 162, 165, 232 AND 259 OF THE
CONSTITUTION OF KENYA, 2010.**

**IN THE MATTER OF LEGAL NOTICE 117 OF 2013
IN THE MATTER OF THE ALLEGED VIOLATION OF
ARTICLES 3, 10, 30, 41, 43 AND 232 OF THE CONSTITUTION
OF KENYA, 2010**

**IN THE MATTER OF THE ALLEGED VIOLATION OF
RIGHTS AND FUNDAMENTAL FREEDOMS IN ARTICLES
41 AND 43 OF THE CONSTITUTION OF KENYA, 2010
IN THE MATTER OF THE ALLEGED VIOLATION OF PART
VII OF THE LABOUR RELATIONS ACT, 2007.**

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**IN THE MATTER OF THE VIOLATION OF CLAUSES (A)
(IV) AND (C) (II) OF THE 2013 TO 2017 COLLECTIVE
BARGAINING AGREEMENT BETWEEN KENYATTA
UNIVERSITY COUNCIL AND THE UNIVERSITIES
ACADEMIC STAFF UNION, KENYATTA UNIVERSITY
CHAPTER**

BETWEEN

WILFRIDA A. ITOLONDO PETITIONER



AND

KENYATTA UNIVERSITY RESPONDENT

JUDGMENT

1. The petitioner filed the petition dated 01.07.2024 in person, praying that the Honourable Court makes the following declarations and orders:
 - a. That a declaration be and is hereby issued that the respondent through its agents violated and continue to violate Articles 3, 10, 30, 41, 43 and 232 of the Constitution of Kenya, 2010.
 - b. That a declaration be and is hereby issued quashing the memo from the agent of the respondent dated 08.09.2022 to Deans of Schools and Heads of Departments and any other similar subsequent memos on revision of teaching workload for academic staff of the respondent that violates the 2013-2017 Collective Bargaining Agreement between the Council of the respondent and UASU KU Chapter.
 - c. That a declaration be and is hereby issued quashing the quarterly performance contracts by the respondent that is effecting the unilateral variation of 2013/2027 2013-2017 Collective Bargaining Agreement between the Council of the respondent and UASU KU Chapter and particularly Clause 5. (iv).
 - d. That the implementation of the 3rd unit for tutorial fellows and 4th unit for the rest of the academic staff be and is hereby permanently stopped with effect from the next semester of an academic year until a new CBA is negotiated and registered in/by this Court.
 - e. That the Honourable Court be pleased to issue any other Orders that it deems it appropriate to grant.
2. The petitioner's case was that:
 - a. The petitioner is a senior lecturer at the respondent University in the department of Educational Management, Policy and Curriculum Studies. She is a member of Universities Academic Staff Union (UASU), KU Chapter and a former official of the union as a vice-chairperson.
 - b. The petitioner sues the respondent for violating the 2013-2017 CBA signed between the respondent's Council and UASU, KU Chapter. In particular, the respondent unilaterally varied clause 5(a) (iv) of the 2013-2017 CBA, on the workload of the academic staff, without involving the union.
 - c. The petitioner has locus to institute court proceedings against the respondent as a member of or in the interest of the group, pursuant to Articles 22(2) (b) and 258 of the Constitution of Kenya read together with Part II, section 4(2) (ii) of Legal Notice 117 of 2013.
 - d. On 31.03.2022 at 02.59 am, the petitioner received a memo from the Acting Deputy Vice Chancellor, Administration through her corporate email regarding the Vice Chancellor (VC's) address on the status of the university. At the said meeting, the VC briefed the staff present that the university was still undergoing financial challenges that necessitated reforms and restructuring of the university. The VC had subsequently appointed a committee in August 2021 that came up with a report on reforms and restructuring of the university but that UASU



had not been involved in the report-making process. Further, the petitioner learnt that the teaching workload of lecturers would be increased after the chairperson of the Committee on Reforms and Restructuring presented the findings of their report.

- e. The petitioner thus wrote to the respondent's VC on 19.04.2022 requesting to be given a copy of the full report before the same had been presented to the respondent's Council for adoption and ratification for implementation. She and other senior academic staff of the University further requested for the said report to be made public especially to the respondent's employees since its outcomes would affect them directly. However, she did not receive any acknowledgement or response to the said letter. The office of the VC also refused to receive the petitioner's reminder letter dated 08.05.2022 sent to them through Fargo Courier on 09.05.2022. Another of her follow-up letter dated 26.04.2022 sent by way of email was also not acknowledged or responded to by the VC.
 - f. On 08.05.2022, the Sunday Nation Newspaper reported the respondent's VC indication of the laying off of hundreds of staff due to restructuring and lecturers taking additional classes. The petitioner's case is that since lecturers taking additional classes affected the workload of the academic staff as set out under the CBA, the same constituted a variation of the CBA and could not be done unilaterally by one party.
 - g. Following the VC's failure to provide the said report and even engage the petitioner, she instituted Miscellaneous Application No. E069 of 2022 against the respondent's VC on 12.05.2022 at ELRC Nairobi. She thereafter withdrew the said miscellaneous application and replaced it with ELRC Pet. No. E153 of 2022. The matter thereafter precipitated to her lodging an application at the Court of Appeal at Nairobi (COACA No. E487 of 2023) to strike out the respondent's notice of appeal upon realizing that the respondent deliberately intended to delay the suit in ELRC Pet. No. E153 of 2022. Consequent to the delay on the hearing and determination of ELRC Pet. No. E153 of 2022 meant that all the prayers sought thereunder were overtaken by events. It is for that reason that the petitioner withdrew the said suit and filed the petition herein.
 - h. The respondent's Deputy Vice Chancellor Academic (DVC) Academic issued a letter dated 08.08.2022 to Deans of Schools and Heads of Departments that the workload for tutorial fellows was from then on three (3) units while for lecturers, senior lecturers and professors (without administrative duties) was four (4) units. In this regard, the petitioner received an email on 20.09.2022 about the changes and additional units as per the workload policy, the first time she was hearing about workload policy. She immediately responded to the chairman of the department indicating she had no problem teaching the fourth unit as long as she was given a contract as per the provisions of clause 5(a) (vi) and (c)(i) of the 2013-2017 CBA.
 - i. The respondent has further incorporated the fourth unit in the Performance Contract without involving the affected academic staff. Even though the respondent has no functional office of UASU, KU Chapter, it should have involved members of the union in making such variation on the performance contract with regards to teaching workload.
3. The petitioner further particularised the violation of the Constitution of Kenya as follows:
- i. The respondent has violated the petitioner's right to fair labour practices under Article 41(1). It has further contravened Article 41(5) on the union's right to engage in collective bargaining by unilaterally varying the 2013-2017 CBA between its Council and UASU, KU Chapter.



- ii. The petitioner has reasonable and legitimate expectation that by dint of Article 2(3) and (4), public officials can only act legitimately if they act in compliance with the Constitution and do not contravene it in any way.
 - iii. The respondents are bound to apply the national values and principles of governance inter alia the rule of law, democracy and participation of the people as set out under Article 10.
 - iv. The respondent through its agents continues to violate Article 10 and 232(1)(d) on participation and involvement of people in policy-making process respectively, by failing to involve members of UASU, KU Chapter when effecting variation in the 2013-2017 CBA, particularly clause 5(iv) and (c)(ii).
 - v. The respondent has taken advantage of the absence of UASU leadership at the respondent University and implementing the 3rd unit for tutorial fellows and 4th unit for permanent academic staff amounts to forced labour thus a violation of Article 30(2).
 - vi. Additionally, the conversion of the said unit into a regular unit has violated the economic and social rights of UASU members under Article 43 as academic staff used to make extra earnings from the unit being part-time.
 - vii. By violating Articles 10, 30, 41, 43 and 232, the respondent through its agents failed to respect, uphold and defend the Constitution and so cumulatively violated and continue to violate Article 3(1).
4. The respondent filed a replying affidavit of Professor Nelson Wawire sworn on 17.12.2024, through Njoroge Regeru & Company Advocates. It was averred that:
- i. The instant petition is an abuse of the court process as it is a replica of Milimani ELRC Petition No. E173 of 2022, UASU vs. Kenyatta University. The petitioner has also previously filed two (2) other cases involving the same issues, which cases are: (a) Milimani ELRC Miscellaneous Application No. E069 of 2022 Dr. Wilfrida Itolondo vs. Vice Chancellor, Kenyatta University; and (b) Milimani ELRC Petition No. E153 of 2022 Dr. Wilfrida Itolondo vs. Kenyatta University. The petitioner is therefore a vexatious litigant and is harassing the respondent with multiple and duplicitous litigations.
 - ii. The respondent and all public universities have been operating on scarce resources for a number of years due to reduced government funding and reduced student numbers, which information is in the public domain. Whereas some universities had to pay staff half salaries, the respondent endeavoured to take steps to improve efficiency at the university without increasing the workload of staff members.
 - iii. The memo dated 08.09.2022 by the respondent's DVC (Academic) does not increase the lecturers' workload but observes that the workload of academic members of staff remains at 40 hours per week. The respondent implemented the subject memo with effect from the first semester of the 2022/2023 academic year as indicated therein. The respondent's management widely consulted with stakeholders and staff members before issuing the subject memo that was part of wider restructuring efforts at the University. In that regard, the respondent's staff members have supported its efforts to increase efficiency at the University because they understand that failure to take such steps may have drastic consequences to staff members, students, stakeholders and the general public.



- iv. The petitioner is complaining about matters dealing with allocation and re-allocation of duties to staff members by the respondent's management, which matters are better left to the discretion of the respondent as opposed to interventions by the Court. Furthermore, UASU is not operational due to leadership wrangles and litigation. The petitioner is therefore under the mistaken belief that there has been no stakeholder consultation only because her union has been engrossed in internal wrangles to enable an appreciation of the true situation.
 - v. The public interest is in favour of disallowing the petition as the respondent's duties would be jeopardized if the respondent is stopped from taking steps aimed at improving efficiency. Asking the Court to suspend a re-organization of work that has been in implementation for almost two (2) years would introduce unnecessary confusion into the respondent's academic programmes. The petition is in fact spent and overtaken by events with the implementation of the subject memo.
 - vi. In any event, the respondent is engaging the petitioner's union in another round of negotiations towards a new CBA. The concerns raised in the instant petition are part of the issues under discussion and the same ought to be resolved amicably through such discussions.
5. The petitioner then filed a supplementary affidavit sworn on 07.01.2025. She averred that the respondent seeks to address its financial challenges yet it always has money to pay extra legal fees for frivolous grounds of opposition, preliminary objections and applications in the various cases filed against it. She noted that the respondent has not placed before this Court any evidence of a meeting between its Council or its agent/representatives and UASU, KU Chapter that led to the variation of clause 5 (a)(iv) and (c)(ii) of the 2013/2017 CBA. She contended that whereas there may be similarities between the instant petition and ELRC Pet. E173 of 2022, the respondent has not provided any evidence before this Court that the petitioner was aware when ELRC Pet. E173 of 2022 was instituted in court. That there is no law that bars a party from withdrawing a suit for good reasons.
 6. It was the petitioner's further averment that the purported consultations conducted by the respondent do not meet the threshold of Articles 10 and 232 of the Constitution of Kenya as effected through the Statutory Instrument Act, No. 23 of 2013 revised in 2023. She argued that the said memos were addressed to appointees of the University and therefore could not have represented members of UASU, KU Chapter. That she had already instituted ELRC Misc. Application E069 of 2022 by the time the memo dated 08.09.2022 was issued. She averred that the fear of disruptions of programs is misguided as allocation of teaching units at the University is on semester basis and not annually. That the prayer sought in the instant petition to stop implementation of the units with effect from the next semester of an academic year until a new CBA is negotiated and registered in this Court is a remedy. The petitioner asserted that the respondent has not provided any evidence to show that consultations for a CBA were ongoing as claimed. In any case, there has been no UASU leadership at the respondent since August 2021 and the signatories for the union on the purported 2017/2021 CBA no longer hold those positions and one is even deceased.
 7. The petitioner filed her written submissions dated 07.01.2025 while the respondent filed submissions dated 10.02.2025. The Court has considered the material on record and returns as follows:
 - a. The evidence is that the instant case challenges the respondent's memo dated 08.09.2022 upon the same grounds as in the earlier filed case University Academic Staff Union (UASU) –Versuus- Kenyatta University ELRC Petition No. E173 of 2022. The claims are indeed collective grievance better handled in accordance with the provisions of the recognition agreement, the collective agreement and a referral to the Court as appears to have been invoked in the said ELRC Petition No. 173 of 2022. The petitioner being a member of the union



has not established a good ground to justify her pursuit of the collective grievance in the circumstance that the union has filed a suit for all union members affected by the impugned decision. The union is a body corporate per section 20 of the *Labour Relations Act*, 2007 with capacity to sue and be sued in its name. The union was therefore best placed to institute the suit as opposed to the petitioner with respect to the alleged breach of the cited provisions of the collective agreement. Accordingly, the Court finds that the instant petition is indeed an abuse of Court process in view of the earlier petition filed to challenge the impugned decision that amounted to a collective grievance affecting all union members including the petitioner.

- b. Indeed, while making that finding the Court has considered section 58 of the Act which provides that the union and the respondent were entitled to conclude a collective agreement providing for alternative dispute resolution mechanism such as by conciliation or by independent arbitrator. The petitioner did not exhibit the recognition agreement and the collective agreement of 2013/2017 exhibited is incomplete as to provide a complete picture of the agreed dispute resolution mechanism between the union and the respondent. Nevertheless, clause 3 of the collective agreement on interpretation states, “Interpretation of this agreement or any part thereof shall be vested in the Joint Negotiating Committee of the Employer and the Union, subject to the right of arbitration by the Employment and Labour Relations Court.” The table of content shows that clause 34 of the collective agreement is on compliance with the CBA. The clause is omitted of the exhibited collective agreement. Be it as it may, the petitioner says nothing of the role of the Joint Negotiating Committee in view of the alleged breach of the cited provisions of the CBA. On the material on record, the Court finds that the petitioner has moved the Court in total disregard of the collective agreement between the union she is a member and the employer, the union. It appears to the Court that the petition is premature besides being abusive of due process of the court in the circumstances that, as already found, the union has already filed a petition to ventilate the collective dispute in issue.
- c. The court has considered the pending petition by the union and the foregoing findings by the Court and it is appropriate that the Court will not delve into the merits of the impugned decision and which the Court has already found is a collective grievance affecting all union members and best ventilated by the union as a body corporate per the agreements between the union and the respondent as well as the applicable law.
- d. It was said that the union may be in leadership disputes but the court considers that such may not adjourn the agreements and legal provisions governing the dispute resolution between the union and the employer. In any event, the adversity of leadership disputes would be the natural consequence of unmet obligations of the union to its members. Social dialogue would include expeditious resolution of such leadership disputes in the continued best interest of the union members.
- e. It appears to the Court that the respondent submission that the petition is trapped by the avoidance principle prevails because the dispute is properly covered by provisions of the the agreements between the respondent and the union about resolution of the dispute such as the one about the impugned decision said to be unilateral variation of workload or working hours and then the attached compensation. The alleged violation of the Bill of Rights is found not established in the circumstances of the instant petition.
- f. The Court has considered the margins of success, the pending petition between the union and the respondent and circumstances of the case including that parties are in continuing employment relationship and each party will bear own costs of the proceedings.



In conclusion judgment is hereby entered for the respondent against the petitioner for dismissal of the petition with orders each party to bear own costs of the proceedings.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS FRIDAY 21ST FEBRUARY, 2025.

BYRAM ONGAYA

PRINCIPAL JUDGE

