



Universities Academic Staff Union (UASU) v Moi University (Employment and Labour Relations Petition E016 of 2022) [2025] KEELRC 422 (KLR) (13 February 2025) (Judgment)

Neutral citation: [2025] KEELRC 422 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
EMPLOYMENT AND LABOUR RELATIONS PETITION E016 OF 2022
MA ONYANGO, J
FEBRUARY 13, 2025
(FORMERLY ELRC NAIROBI PETITION NO. E069 OF 2022)

BETWEEN

UNIVERSITIES ACADEMIC STAFF UNION (UASU) PETITIONER

AND

MOI UNIVERSITY RESPONDENT

JUDGMENT

1. The Petitioner is a trade union registered under the *Labour Relations Act* to represent the labour interests of academic staff of all public universities in Kenya with the objective of improving the working conditions of the academic faculty and the quality of university education.
2. The Respondent is a public university duly registered under the *Universities Act*, No. 42 of 2012.
3. The Petitioner has a recognition agreement with the Respondent through the Inter Public Universities Councils Consultative Forum (IPUCCF). The parties have negotiated several Collective Bargaining Agreements (CBAs). The CBA relevant to this suit is the one covering the period 2017/2021 which was registered after a protracted court case.
4. It is the Petitioner's case that upon registration of the CBA, the Petitioner and the Respondent were to form a Local Implementation Committee between the Petitioner's local Union Chapter and the Respondent. The Respondent however delayed the formation of this committee.
5. The Petitioner states that the CBA for the period 2017/2021 was to run for Four (4) years making up a total of 48 months. The Petitioner's members working with the Respondent were therefore entitled to the monthly benefits accruing from the CBA for a total of 48 months. That the Respondent is legally obligated to implement and pay the Petitioner's members their correct salaries as per the 2017/2021 CBA for 48 months in accordance with the CBA cycle.



6. The Petitioner avers that in breach of its obligations as an employer and in breach of the law and its contractual duties, the Respondent refused to implement the CBA and it is only towards the end of the CBA cycle in 2021 that the Respondent agreed to implement the same but with a rider that it would only do so from November 2021 to March 2022.
7. The Petitioner avers that while it was still engaging the Respondent on the need to honour the CBA fully, the Respondent came up with its circular dated 28th April 2022 in which it stated that it would suspend the implementation of the 2017/2021 CBA and revert the employees back to a salary scale matrix outside the CBA.
8. That the Respondent further stated it was deviating from a Return to Work Formula of 19th November 2021 wherein the Respondent agreed to continue implementing the salaries as contained in the 2017/2021 CBA beyond March 2022.
9. It was the Petitioner's position that upon registration and start of implementation of the 2017/2021 CBA, the refusal by the Respondent to continue paying the agreed salaries and reverting to a salary scale which had the effect of reducing the salaries of members of the Petitioner was illegal, unlawful and a breach of the employees' rights to fair labour practice and the law. It averred that all these were happening without the concurrence or involvement of the Petitioner's Moi University Chapter of the Union.
10. The Petitioner stated that as a stakeholder whenever the terms and conditions of its members are in issue it ought to be involved as required by law for purposes of securing the interests of its members.
11. The Petitioner states that the exclusion of the Petitioner on matters touching on University Academic Staff salaries, benefits or other terms and conditions of employment was an infringement of the academic staff rights guaranteed by the Constitution, the Employment Act and international best practices in Labour Relations.
12. The Petitioner stated that the actions of the Respondent was an affront on the employment contracts of its members and the provisions of the CBA.
13. The Petitioner stated that it is imperative that the Respondent carried out its mandate consultatively by involving all the requisite stakeholders such as the Petitioner since the contents of the circulars touched directly on the terms and conditions of service of academic staff contrary to Article 232 (I) (d) (e) and (f) of the Constitution of Kenya, 2010 which requires the involvement of the people in policy making, accountability and transparency.
14. The Petitioner stated that the Respondent had ignored to consider its input in the intended changes.
15. The Petitioner stated that the intended changes by the Respondent would discriminate and remunerate differently staff of equal academic qualifications in other 31 Universities implementing the 2017/2021 Collective Bargaining Agreement.
16. The Petitioner stated that the Respondent's actions infringed on the University Academic Staff' rights to collective bargaining guaranteed by the Constitution of Kenya at Article 41(5) since it proposed reduced salaries which were in total and complete contradiction with the CBA entered as between the Petitioner and the Universities.
17. The Petitioner averred that the Respondent had by its actions violated Articles 10, 41, 47 and 232 of the Constitution.



18. The Petitioner stated that as a result of the infringement of its members' rights their terms and conditions of service will be adversely violated.
19. The Petitioner stated and its members will be condemned to earn a salary that did not match the work they did and their qualifications, that the pay was discriminatory and degrading as they will be condemned to receive pay lower than the pay agreed in the CBA.
20. The Petitioner stated that unless this Court intervened, the Respondent would proceed with their intended implementation of the circulars which would occasion injustice to the University Academic Staff in violation of the existing CBA.
21. The Petitioner stated that the Respondent's actions were tainted with illegality, and a blatant abuse of the Court process which ought to be brought to an end as a matter of urgency as such conduct erodes the dignity of the Court.
22. The petitioner therefore prayed for the following orders:
 - a. A Declaration that the Respondent's Circulars Ref No. MU/ADM/1/6 dated 28th April 2022 on suspension of implementation of the 2017/2021 Collective Bargaining Agreement using the Diagonal matrix is un-constitutional, null and void in relation to Articles 10 41 47 and 232 of the Constitution and the Employment Act 2017.
 - b. A Declaration that the Respondent has infringed on the Petitioner's Constitutional rights under Articles 10 41 47 and 232 of the Constitution, 2010.
 - c. An Order restraining the Respondent, its servant or agents from implementing the recommendations regarding the eligibility or qualifications for an academic member of staff Circulars Ref No. MU/ADM/1/6 dated 28 of April 2022 on suspension of implementation of the 2017/2021 Collective Bargaining Agreement using the Diagonal Matrix is un-constitutional, null and void in relation to Articles 10, 41, 47 and 232 of the Constitution and the Employment Act 2017.
 - d. An order of permanent stay of the implementation of the Circulars Ref No. MU/ADM/6 dated 28th April 2022 on suspension of implementation of the 2017/2021 Collective Bargaining Agreement using the Diagonal matrix is un-constitutional, null and void in relation to Articles 10 41 47 and 232 of the Constitution and the Employment Act 2017.
 - e. An Order restraining the Respondent, its servants or agents from implementing any reduction in the Petitioners members' salaries.
 - f. An order directed to the Respondent to fully implement the 2017/2021 Collective Bargaining Agreement.
 - g. An order restraining the Respondent from victimizing, harassing or coercing, intimidating or otherwise dismissing or terminating any of the academic members of staff at the Respondent University as a consequence of the 2017/2021 Collective Bargaining Agreement implementation dispute and/or industrial actions.
 - h. The Respondent be and is hereby restrained either by themselves or their servants, agents, officers or any other person whomsoever is acting on its behalf from downgrading and slashing, reducing or in any other way diminishing the employees' salaries.
 - i. Any other or further order this Honourable Court may deem fit to grant in the circumstances.



- j. Interest at Court rates on (c) above from the date of filing suit until settlement in full
 - k. Cost of the suit.
23. The petition was filed together with a notice of motion application which the Petitioner later withdrew vide Notice of Withdrawal of Application dated 20th September, 2023.
24. The Respondent was served but did not file appearance or any response to the petition. It did not participate in the proceedings.
25. Directions were given that the petition be disposed of by way of written submissions. Only the Petitioner filed its submissions.

Petitioners Submissions

26. The Petitioner framed two issues for determination being
- i. Whether the Collective Bargaining Agreement between the Petitioner and the Respondent for the period 2017-2021 is valid; and,
 - ii. Whether the Petitioner is entitled to the orders sought in the petition dated 9th May, 2022.
27. On the 1st issue the Petitioner submitted that a Collective Bargaining Agreement is defined in the *Labour Relations Act* as “a written agreement concerning any terms and conditions of employment made between a trade union and an employer, group of employers or organization of employers”.
28. It submitted that a CBA exists between the parties hereto which was voluntarily negotiated and is registered and acknowledged by all parties thereto. That the Respondent is therefore under obligation to implement the same.
29. The Petitioner cited and relied on the decision in *Kenya Plantation and Agricultural Workers Union v Coffee Research Foundation* 2014 eKLR where the Court ordered implementation of the CBA with respect to underpayment of wages and pay of redundancy benefits.
30. The Petitioner further relied on the decision in *Kenya Union of Commercial, Food and Allied Workers v Kenya National Library Service* [2016] eKLR where the Court held that once a CBA has been registered, as was the case in the claim before it, Section 59(5) of the *Labour Relations Act* had already taken effect and therefore the CBA was binding and enforceable and failure to implement any part of the CBA gave the wronged party a remedy of specific performance. The Court further held that since the Respondent was claiming inability to pay due to acts of a third party, nothing prevented it from joining any such party/parties to the case for them to bear responsibility of the owing dues. The Court entered Judgement for the Claimant against the Respondent for specific performance of the terms of the CBA.
31. The Petitioner also cited *CBA 103 do 2018: Social Service League, M. P. Shah Hospital v Kenya Union of Domestic, Hotels, Educational Institutions and Allied workers* where the court observed that:
- “A CBA is contractual agreement like any other left to party autonomy.... Apart from an illegality, the normal legal principles in setting aside a contract would apply and this include fraud or misrepresentation.”
32. The Petitioner submitted that there is a valid CBA between the parties.



33. On the second issue the Petitioner submitted that in Industrial Court C.A. 284 of 2014: Kenafric Industries Limited v Bakery Confectionary Food Manufacturing and Allied Workers Union [2014] eKLR it was held that the employer had executed the CBA with the intention of being bound by its terms and to create a legal relationship with the union/employee and not merely as a matter of honour. The Petitioner submitted that the Respondent must be bound by the terms of the CBA
34. The Petitioner further relied on the decision in Bernard Nyakina Nyanyuki & 71 others v Polysack Ltd (2019), where Rika J. stated as follows:
- Section 17 of the *Employment Act*, 2007 stipulates that an employer is bound to pay to the employee the entire amount of salary earned by, or payable to the employee, when such salary is due for payment.”
35. Further, the Petitioner submitted that in Kenya Chemicals & Allied workers Union sued the Respondent in ELRC Cause No 2280 of 2014 Kenya Chemical & Allied Workers Union v Polysack Ltd the court ordered the parties to sign a CBA with a 10% increment for 3 years.
36. It was therefore the Petitioner’s submission that the actions of the Respondent were in contravention of the provisions of the *Constitution* and legislation and hence the need for this Court to intervene in order to protect the rights of the Petitioner by allowing all the prayers as sought with costs and interest.
37. As stated earlier, the Respondent was served with pleadings herein but did not take part in the proceedings. It filed neither reply to the petition nor submissions.

Determination

38. Having considered the pleadings and submissions of the Petitioner on record, the issue in dispute is whether the Respondent is bound to implement the CBA for the parties for the period 2017-2021.
39. Sections 54 and 59 of the *Labour Relations Act* provide:

54.

- (1) An employer, including an employer in the public sector, shall recognise a trade union for purposes of collective bargaining if that trade union represents the simple majority of unionisable employees.
- (2) A group of employers, or an employers’ organisation, including an organisation of employers in the public sector, shall recognise a trade union for the purposes of collective bargaining if the trade union represents a simple majority of unionisable employees employed by the group of employers or the employers who are members of the employers’ organisation within a sector.
- (3) An employer, a group of employers or an employer’s organisation referred to in subsection (2) and a trade union shall conclude a written recognition agreement recording the terms upon which the employer or employ

59.

- (1) A collective agreement binds for the period of the agreement –
 - (a) the parties to the agreement;
 - (b) all unionisable employees employed by the employer, group of employers or members of the employers’ organisation party to the agreement; or



- (c) the employers who are or become members of an employers' organisation party to the agreement, to the extent that the agreement relates to their employees.
- (2) A collective agreement shall continue to be binding on an employer or employees who were parties to the agreement at the time of its commencement and includes members who have resigned from that trade union or employer association.
- (3) The terms of the collective agreement shall be incorporated into the contract of employment of every employee covered by the collective agreement.
- (4) A collective agreement shall be in writing and shall be signed by—
 - (a) the chief executive officer of any employer, the chief executive or national secretary of an employers' organisation that is a party to the agreement or a representative designated by that person; and
 - (b) the general secretary of any trade union that is a party to the agreement or a representative designated by the general secretary.
- (5) A collective agreement becomes enforceable and shall be implemented upon registration by the Industrial Court and shall be effective from the date agreed upon by the parties.

Registration of collective agreement.

40. Further, section 60 provides:

60.

- (1) Every collective agreement shall be submitted to the Industrial Court for registration within fourteen days of its conclusion.
- (2) The employer or employer's organisation which is party to an agreement to be registered under this section shall submit the agreement to the Industrial Court for registration.
- (3) If an employer or employers' organisation fails to submit the collective agreement to the Industrial Court as specified in subsection (1), the trade union may submit it.
- (4) The Industrial Court may request the parties to a collective agreement to supply further information or make oral or written representations to it for the purposes of this section.
- (5) The Industrial Court may register an agreement-
 - (a) in the form it was submitted by the parties; or
 - (b) with any amendment or modification agreed to by the parties.
- (6) The Industrial Court shall not register a collective agreement that –
 - (a) conflicts with this Act or any other law; or
 - (b) does not comply with any directives or guidelines concerning wages, salary levels and other conditions of employment issued by the Minister.



(7) The Industrial Court –

- (a) may register a collective agreement within fourteen days of receiving it;
- (b) may refuse to register a collective agreement unless all parties to the agreement have had an opportunity to make oral representations to the Industrial Court; and
- (c) shall give reasons for refusing to register any collective agreement. Terms and conditions of service in the public sector where there is no collective bargaining.

41. From the provisions above, it is clear that once a CBA is registered, the terms and conditions of service thereof become part of the terms and conditions of service of the employees covered by the CBA.
42. This means that the CBA for the parties herein for the period 2017-2021 became effective and was incorporated into the terms and conditions of service of the employees of the Respondent through the judgment of this court dated and delivered on 3rd July, 2020 when the CBA was registered and the subsequent judgment dated and delivered on 15th January, 2021.
43. The only way the CBA can be reviewed is as provided for at paragraph 5.2 of the CBA or by an order of the court. Any failure to implement the CBA would constitute a violation of the rights of both the Petitioner and its members under Article 41 of the Constitution.
44. I accordingly make orders as follows:
- a. A Declaration be and is hereby made that the Respondent's Circulars Ref No. MU/ADM/1/6 dated 28th April 2022 on suspension of implementation of the 2017/2021 Collective Bargaining Agreement using the Diagonal matrix is unconstitutional, null and void in relation to Articles 10 41 47 and 232 of the Constitution and the Employment Act 2017.
 - b. A Declaration be and is hereby made that the Respondent has infringed on the Petitioner's Constitutional rights under Articles 10 41 47 and 232 of the Constitution, 2010.
 - c. An Order be and is hereby issued restraining the Respondent, its servant or agents from implementing the recommendations regarding the eligibility or qualifications for an academic member of staff Circulars Ref No. MU/ADM/1/6 dated 28th day of April 2022 on suspension of implementation of the 2017/2021 Collective Bargaining Agreement using the Diagonal Matrix.
 - d. An order of permanent stay of the implementation of the Circulars Ref No. MU/ADM/6 dated 28th April 2022 on suspension of implementation of the 2017/2021 Collective Bargaining Agreement using the Diagonal matrix.
 - e. An Order restraining the Respondent, its servants or agents from implementing any reduction in the Petitioners members' salaries.
 - f. An order directed to the Respondent to fully implement the 2017/2021 Collective Bargaining Agreement.
 - g. An order restraining the Respondent from victimizing, harassing or coercing, intimidating or otherwise dismissing or terminating any of the academic members of staff at the Respondent University as a consequence of the 2017/2021 Collective Bargaining Agreement implementation dispute and/or industrial actions.



- h. The Respondent be and is hereby restrained either by itself or its servants, agents, officers or any other person whomsoever is acting on its behalf from downgrading and slashing, reducing or in any other way diminishing the employees' salaries.
- i. There shall be no order for costs.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 13TH DAY OF FEBRUARY 2025.

MAUREEN ONYANGO

JUDGE

