



**KCA University v Kenya Private University Workers Union Chairperson
& another; Registrar of Trade Unions (Interested Party) (Petition
E044 of 2022) [2025] KEELRC 1030 (KLR) (28 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1030 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E044 OF 2022
JW KELL, J
MARCH 28, 2025**

BETWEEN

KCA UNIVERSITY APPLICANT

AND

**KENYA PRIVATE UNIVERSITY WORKERS UNION CHAIRPERSON 1ST
RESPONDENT**

KENYA UNIVERSITY WORKERS UNION 2ND RESPONDENT

AND

REGISTRAR OF TRADE UNIONS INTERESTED PARTY

JUDGMENT

1. The Petitioner brought a Petition dated 7th March, 2022 under the provisions of Articles 19, 20,21,23,165(3)(b) (d)(i,ii & iii) and 258 of *the Constitution* of Kenya, 2010, Article 10,21,40,41 & 43 of *the Constitution*, Section 4,5 & 8 of the *Labour Relations Act* No. 14 of 2017 and Section 25 of the *Land Registration Act* No. 3 of 2012 supported by its Supporting Affidavit sworn by Prof. Isiah I.C Wakindiki, Vice Chancellor and CEO of the Petitioner seeking the following Orders:
 - i. A declaration that the Respondents' conduct, jointly and severally, in seeking to undertake its institutional activities in the precincts of the Petitioner, when learning programmes are ongoing violates the Petitioner's right to education under Article 42(1)(f) of *the Constitution* of Kenya, 2010.
 - ii. A declaration that the Respondents' conduct, jointly and severally, in seeking to undertake its institutional activities in the precincts of the Petitioner, forcefully, and absent admission



by the Petitioner constitute trespass and violates the Petitioner's rights under Article 40 of *the Constitution* of Kenya, 2010.

- iii. An order of prohibition be and is hereby issued restraining the 1st Respondents whether acting jointly or severally by themselves, their servants, agents, representatives or howsoever otherwise from conducting any of their business on the premises of the University;
 - iv. A permanent injunction to issue against any officers, agents or employees of the 1st Respondent from trespassing any of the Petitioner's premises.
 - v. Damages for trespass, plus accrued interest.
 - vi. Costs of this suit.
 - vii. Any other or further order or relief that this Honorable Court deems fit to grant.
2. The Interested party entered its response to the Petition by filing a Replying Affidavit dated 28th March, 2022 sworn by E.N Gicheha(the Registrar of Trade Unions).
 3. The respondents filed grounds of opposition dated 26th April 2022 to the petition and annexed documents in support.

Petitioner's case

4. It is the Petitioner's case that it has become impossible for the Petitioner to pursue these mandates under its establishing charter, in furtherance its students' right to education under Article 43 (1) (f) of *the Constitution*, courtesy of the Petitioners unlawful and recurrent interruption of the academic programmes, in the name holding members" prayers and consultative meetings".
5. The Petitioner averred that its properties, whether leased or bought, are subject to the rights of a proprietor under Section 25 of the *Land Registration Act*, which must be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever.
6. Whereas the Respondents possess the right to plan and organise its administration and lawful activities, that right must, however, be seen in the light of Article 24(1)(d) of *the Constitution*, that a right may be limited to the extent that it is reasonable and justifiable in open and democratic society to ensure that the enjoyment of that right and fundamental freedoms does not prejudice the right and fundamental freedom of the students to lean, uninterrupted by exercise of the Union's activities and the right of the Petitioner to enjoy quiet possession of its premises.
7. It is the Petitioner's case that the 1st Respondent action to conduct its affairs within the precincts of the Petitioner's institution, which is a busy learning institution where academic programmes are ongoing threatens and poses a great risk of causing disorder and disruption in the normal functioning of the learning system thus interfering with the students right to education.
8. Further, the Respondents', in totality, in their communications to/ encounter with the Petitioner, have threatened assault, caused harassment, obstructed paths, road, entrance or exit to premises to the Petitioners premises, trespassing on the petitioner's premises and interrupted learning activities/ programmes.
9. The Petitioner averred that the Respondent has had an option to be orderly, lawful and civil in pursuit of the rights *the constitution* allocates to it, it has elected rudderlessness, chaos, vandalism, threats of violence, trespass and nuisance.



10. The Petitioner contended that 1st Respondent to conduct its activities on the premises of the Petitioner/ Applicant is in blatant violation of Article 10 (2) (b) of the Constitution which dictates that the national values and principles to be held paramount by all state organs and persons to include human dignity, equity, social justice, inclusiveness, equality, human dignity, human rights and non-discrimination.
11. Further, the cumulative and continuing actions by the Respondents threatens the right to protection of the Petitioner's right to property as enunciated in Article 40 of the Constitution.
12. The Petitioner submitted that it reserves the right to admission on the said property and the Respondent cannot be allowed to forcefully conduct its business on the premises of the Institution without the express consent of the Petitioner especially where the Respondent have the option of conducting the said business elsewhere.
13. It is averred that the action by the 1st Respondent of carrying out its affairs on the premises of the Petitioner/ Applicant is in violation of the students' rights as enshrined in the Article 43 on their Economic Right and Social Rights.
14. In a nutshell, the Petitioner seeks this Honourable Court's Intervention as a matter of utmost urgency.

The 1st and 2nd Respondent's case

15. The respondents denied the petition and produced evidence to the effect that they had reported the trade dispute and that the conciliator had made findings in their favour and that they ought to be allowed access. The respondent stated that in the past they had been allowed access and it was the new VC who had started having issues with their access. That the reliance on article 40 and 42 of the Constitution could not be used to defeat labour rights.

Interested Party's case

16. The Interested Party contends that it is not its mandate to regulate relations between a trade union and the employees as this is a function under the Department of Labour in the Ministry of Labour.
17. Further, the interested party submits that it is good practice for the trade union to liaise with the Employer every time the union intends to carry out any activity within the Employer's premises as invading the employer's premises without their knowledge is tantamount to trespass.
18. The interested party further avers that the employers upon request by the trade union should also allow the trade union access to its premises and allow employees wishing to be addressed by the union to participate.
19. It is the interested party's case that having no role in the Employee/Employer relationship, would wish to be excused from the proceedings.

Written Submissions

20. The Court directed that the Petition be canvassed by way of written submissions. The Petitioner complied. The Petitioner's written submissions dated 23rd February, 2023 were filed by the Petitioner's counsel Okwach & Company Advocates.
21. The Respondents filed their written submissions dated 20th February 2025 through the lawfirm of Tonge Yoya & Associates Advocates.
22. The Petitioner identified the following issues for determination in the Petition:



- i. Has the Petitioner demonstrated a proper case; and
 - ii. Would the 1st Respondent's action, if untamed, violate the Petitioner's and/or its students' constitutional rights.
23. The Respondents submitted that the issue for determination was whether the petitioner had made a case to enable the Court restrict the enjoyment of fundamental right of employee under Article 41 of the Constitution of grating declaration premised on article 40 and 42 of the Constitution 2010.
24. The court having perused the pleadings and written submissions of the Petitioner was of the considered opinion that the issues for determination in the Petition was whether the petition was merited.

Decision

Petitioner's Case

25. The right of the union to plan and organize its administration and law activities under section 8(b) of the Labour Relations Act must be seen in light of Article 24(1) (d) of the Constitution. The Union rights of organizing must not prejudice rights and freedoms of students to learn uninterrupted and the right of the Petitioner to enjoy quiet possession of its premises.
26. The Petitioner stated it had become difficult to pursue its mandate under the establishment charter in furthermore to student's right to education under Article 43 (1) (f) of the Constitution due to Respondent's unlawful and ..interruption of the academic programmes in the name of holding "prayers and consistence meetings". The 1st Respondent intended action to conduct its affairs within the university pre-units which is a busy learning institution is unfathomable.
27. The Respondent in their communication to encounter with the petitioner have threatened assault, caused harassment, obstructed the entrance 6 ext. to petitioner's premises, the passing on the petitioner's premises and interrupted hearing activities/programmes.
28. The Petitioner states that its rights under Article 40 of right to admission to the property and quiet enjoyment. That the 1st Respondent's conduct of its business affairs was in violation of student's rights under Article 43 of Constitution. The petition was supported by affidavit of Prof. Wakindiki dated 7th March 2020. He averred that the 1st Respondent, if lawfully registered and its members reserve the right to plan and organize their administrative and lawful activities.
29. The Prof. annexed matter dated 8th February 2022 by the Respondent inviting their members to the Petitioner's premises for prayer and discussion of other issues affecting its members on the 9th February 2022 "IW – 2".
30. The Prof. sought legal advice and the Advocates on record responded to her union vide letter dated 8th February 2022 (IW3) to the effect that through the union enjoy right of lawful activities, to do so in the Petitioner's premises when learning is ongoing and without seeking her permission of the petitioner violated the student's right to education and the petitioner's right to quiet possession of its property. The Prof. stated the Union leadership was known to be malicious, scandalous and chaos but a reasoned letter by Advocate did not deserve that type of reply C/W – 4 was a copy of the union email).

Response

31. The Respondents filed grounds of opposition dated 26th April 2022 by Peter Emisembe Owiti, General Secretary of the Union. Reiterated right to assume (Article 36) –



- (1) Every person has the right to freedom of association, which includes the right to form, join or participate in the activities of an association of any kind. (2) A person shall not be compelled to join an association of any kind. (3) Any legislation that requires registration of an association of any kind shall provide that— (a) registration may not be withheld or withdrawn unreasonably; and (b) there shall be a right to have a fair hearing before a registration is cancelled.

Article 24

24.

- (1) A right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including—
- (a) the nature of the right or fundamental freedom;
 - (b) the importance of the purpose of the limitation;
 - (c) the nature and extent of the limitation;
 - (d) the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and
 - (e) the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.
- (2) Despite clause (1), a provision in legislation limiting a right or fundamental freedom—
- (a) in the case of a provision enacted or amended on or after the effective date, is not valid unless the legislation specifically expresses the intention to limit that right or fundamental freedom, and the nature and extent of the limitation;
 - (b) shall not be construed as limiting the right or fundamental freedom unless the provision is clear and specific about the right or freedom to be limited and the nature and extent of the limitation; and
 - (c) shall not limit the right or fundamental freedom so far as to derogate from its core or essential content.
- (3) The State or a person seeking to justify a particular limitation shall demonstrate to the court, tribunal or other authority that the requirements of this Article have been satisfied.
- (4) The provisions of this Chapter on equality shall be qualified to the extent strictly necessary for the application of Muslim law before the



Kadhis' courts, to persons who profess the Muslim religion, in matters relating to personal status, marriage, divorce and inheritance.

(5) Despite clause (1) and (2), a provision in legislation may limit the application of the rights or fundamental freedoms in the following provisions to persons serving in the Kenya Defence Forces or the National Police Service—

- (a) Article 31—Privacy;
- (b) Article 36—Freedom of association;
- (c) Article 37—Assembly, demonstration, picketing and petition;
- (d) Article 41—Labour relations;
- (e) Article 43—Economic and social rights; and
- (f) Article 49—Rights of arrested persons

10. That, in employment and labour relations therefore, the rights granted under article 41 on unionisation read together with article 36 on the right to association are further regulated under the *Labour Relations Act* to give further meaning, effect and realization to these rights. The regulation of the right to associate and unionise under the *labour Relations act* is not a derogation from the constitutional provisions under the Bill of Rights. Such regulations are lawful.

11. That, it is not the nature, conduct and role or the arrangements of the Petitioner/ Applicant herein to regulate unionisation. Rather, the right of unionise is secured under article 41 of *the Constitution* and cannot be taken away under any form of contract of employment where the subject employee is unionisable. The right to unionise exist the arrangements and opinion of the employer herein notwithstanding.

12. That, the Petitioner has refused to deduct and remit union dues from the members of the 1" & 2nd Respondent who have acknowledged their membership which action is an anti-Trade union activity which contravenes Article 27(2) of *The Constitution* of Kenya on the right to equally enjoy the right to fair labour practices and Article 41(2) (c) of *the Constitution* of Kenya on the right to form, join or participate in the activities and programs of a trade union, Part II Sec. 4 (1) of the *Labour Relations Act, 2007* on the Right to Freedom of Association and International Labour Convention (I.L.O) No. 87 of 1948 setting forth the Fundamental right for



workers' to establish and join organizations of their own choosing without authorization.

13. That, the Petition offends the mandatory provisions of Rule No.9 of the Employment and Labour Relations Court (procedure) Rules, 2016 and Part II Rule No. 4(1) & (2) of The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 as the Petitioner being an administrative officer has failed to demonstrate the similarity of cause against which the Petition is premised hence the Petitioner has no locus standi to file this instant Application and in any case the issues as enumerated by the Petitioner can only be argued in a normal claim and not a petition.
 14. That, the Petitioners have not demonstrated and / or described any right or fundamental freedoms provided for in the Constitution that is allegedly denied, violated or infringed or threatened, in accordance to Part II Rule No. 4(1) of The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 thus the Petition is premature and an abuse of court process.
32. Owiti, for the union, said the prayers sought would deny the Respondents their constitutional mandate under Article 41 (5) of the Constitution of Kenya 2010 on the right to collective bargaining as well as the right to representation.
33. The Petitioner in response to the grounds of opposition filed response by Prof. Wakindiki dated 25th April, 2022;-
- “ 1, Prof. Isiah I.C. Wakindiki of Post Office Box number Nairobi-5680% in the Republic of Kenya do hereby make oath and state as follows:
1. That I am the Vice Chancellor and the CEO of the Applicant University thus well conversant with the issues forming subject of this matter and therefore competent to swear this affidavit.
 2. That the facts and matters deponed to herein are derived partly from my own knowledge and partly from information and advice received by me from the Petitioner's Advocates, Messers Okwach & Company Advocates. To the extent that any statement made herein is based on information or belief, I have disclosed hereunder (as case may be) of such information or belief and I verily believe the same to be true.
 3. That we have read the replying affidavit of the 1st and 2nd Respondents to our application dated 7th March 2022, deponed by the 1" Respondent's General Secretary Mr. Peter Emisembe



Owiti Manager and its grounds of opposition, and we hereby respond as follows.

4. That we reiterate our earlier position that the Petitioner recognise the 1st Respondent's Constitutional right under Articles 36(1), as read together with Article 41(2)(c) thereof, which permits the formation of a trade union and allows any employee to join and participate in its lawful activities and programmes. Indeed these provisions are supplemented by Sections 3(a), (b), (c), 4(1) (a), (b) and 5(1),(2) of the *Labour Relations Act*, No. 14 of 2007. Thus, under these provisions the 1st Respondent, if lawfully registered, and its members reserves the right to plan and organize their administration and lawful activities.
5. That notwithstanding the aforementioned rights, the Honourable Court must take judicial notice that learning institutions play important role in breaking the link between socio-economic background and life prospects of the students, and that education plays a role in changing patterns of inequality and is one of the major drivers of intergenerational social and income mobility.
6. That, therefore, quality education for all results not only in a school system where no one is left behind, but also in a more equitable society where individuals can improve their socio-economic situation on a basis of merit. Looking at the importance of learning institutions and their processes, there is undeniably, an increased responsibility on every stakeholder to, at any cost, safeguard the educational processes and the inalienable right of student to school, uninterrupted.
7. That without prejudice to the foregoing, the petitioner replies as follows to the said affidavit of Peter Emisembe Owiti, that;
 - 7.1. In response to paragraph 4 of thereof, the Petitioner reminds the 1st and the 2nd Respondent that its right to fair labour practices is not in isolation and/or elevated above the Petitioner's proprietary rights over its premises and the rights of the student to uninterrupted learning programme, and therefore it cannot in law possess the authority to unilaterally 'invite itself', as it says for its activities at the Petitioner's premises.
 - 7.2. In response to paragraph 5 and 6, the Petitioner has never in any form denied the Respondents any right to conduct its activities, but the Petitioner insists, the Respondents must be mindful of the institutional expectations of such activities, and it has even been suggested to the Respondents that they hold their activities when school programmes



are not in progress, e.g. on holidays/ weekends, but the Respondent does not heed such reasonable request, resorting to insulting the Petitioner's administrative official and issuing threats and intimidatory demands.

- 7.3. In its letter dated 2nd December 2021, annexed as exhibit "APP-8", in the affidavit of the 1st and 2nd Respondent, indeed the Petitioner clearly indicates to the 1st Respondent that "the management of KCA University promotes fair labour practices as provided under Article 41 of *the Constitution* of Kenya and is cognizant of that fact"...and that "in exercise of this right, KCA University staff are free to join ...union of their choice.". Further, the Petitioner offers that "in accordance with section 56 of the *Labour Relations Act*...to enable the university grant access, please provide the names of the recognised union representative...", and the Petitioner then made a reasonable request that "the meetings be conducted outside working hours to avoid disruption of normal university operations." But the Respondents are unhinged and does not want to oblige to these lawful and reasonable requests!
- 7.4. For completeness and context, the letter dated 08/01/2022, exhibited as annexure "APP-10B" in the 1st and 2nd Respondents' affidavit must be read together with the aforesaid letter dated 2nd December 2021. The Respondent's having failed to identify its recognised union official as the law contemplates, and also, since the union failed to identify the measures they would put in place to avert interference with the University's programmes, the Petitioner rightfully received legal advice, in the letter dated 08/01/2022, to exercise the right of refusal to admit trespassers to its institution.
- 7.5. In reply to paragraphs 7, 8 and 9 thereto, the Petitioner maintains that;
 - 7.5.1. The Petitioner todate has never been served with any memorandum of dispute itemizing the Respondents' grievances for the Petitioner's record and/or action, it remains a stranger to the alleged dispute.



- 7.5.2. Upon receiving invitation to attend a meeting at the Department of Labour to discuss allegations which were not in the Petitioner's knowledge, the Petitioner rightfully sent an advocate as its representative.
- 7.5.3. Section 48 of the *Employment Act* expressly states that only in complaints forwarded to the Labour Office, by an employee or employees' union on account of summarily dismissal or unfair termination shall the employer be required to attend in person. Those were not the nature complaints we saw for discussions on the letter inviting the parties to a meeting at the labour department.
- 7.6. In reply to paragraph 10 thereof, the Petitioner states that joining/exiting membership of employees/trade union is a voluntary enterprise and thus for the respondent to suggest, without evidence, that the Petitioner has any role to play in the Respondents' dwindling membership/fortunes is utterly absurd, ridiculous and a pointless smear on the Petitioners' otherwise good repute!
- 7.7. In response to paragraphs 11, 12, 13, 14, 15 and 16 thereof, the Petitioner maintain that it has never at any one point prevented the Respondent from exercise of those rights under Article 41, it only insists on fair and lawful procedure, provided by law, for such exercise. The Respondents remains malefactorious, knows no law nor its requirement for procedural propriety!
- 7.8. Paragraph 17 is hearsay and of no value in the proceedings now before the Honourable Court.
- 7.9. In response to paragraph 18 and 19 thereof, the propriety of the alleged conciliation suggested by the 1st and 2nd Respondent is not the subject of these proceedings, we see it that the Respondents are attempting to distract the Honourable Court's attention from significant issues that the present petition raises. we would according urge the Honourable Court to disregard the same. We note though, with surprise/interest the raft of ridiculous recommendations in the said "a conciliatory



report" annexed as exhibit APP-17 of the 1st and 2nd Respondent's affidavit. It go as far as recommending that the Petition takes steps to compel its employees not to exit the membership of the 1st Respondent! What copy of the Constitution does the 'conciliator' possess?

8. That be that as it may, the Petitioner has been so gracious and accommodative to the Respondent in the face of Section 54 of the Labour Relations Act, 2007, which does command the Petitioner to ignore the 1st Respondent, on account of their membership at the Petitioner not forming a simple majority of the unionisable staff, they barely reach 1/10 of the total number of the unionisable staff. The Petitioner has a total of two hundred and seventy-seven (277) full time staff members, out of which unionisable staff total to one hundred and eighty five (185). For the foreseeable past, only fifteen (15) of the unionisable staff members are members of the 1st Respondent! Yet the 1st Respondent remains the most disruptive of all the unions for which the Petitioner's employees have subscribed to.
9. That in response to the 1st and 2nd Respondent's ground of opposition, I am advised by our advocate on record, which advise I verily believe to be true that the same grounds are mere repetition of fact already contained in their affidavit, thus in reply, we reiterate our earlier position and the fact deponed to in this affidavit and add that Article 22 of the Constitution guarantees the right of every person to institute court proceedings claiming a right or fundamental freedom of rights is threatened or infringed."

34. The Interested Party was Gicheha, Registrar of Trade Union. The court considered she is an expert in union issues. In response to the petition she stated that the 1st Respondent was a duly registered trade union representing employees working at private universities. The Registrar stated that it is good practice for the trade union to liaise with the employer every time the union intends to carry out any activity within the employer's premises as invading the employer's premises without their knowledge is tantamount to trespass. The Registrar further averred that the employers upon request by the trade union should also allow the trade union access to its premises and allow employees wishing to be addressed by the union to participate. The Registrar sought to be excused from the proceedings stating she had no role in employee/employer relationship.
35. The court noted contents of the nd December 2021 which the court found expressed the correct position of the law as follows:-

Vice Chancellor Prof. Isaack I. C. Wakindiki in response to the Union Secretary General of 2

"Re: Request for a Meeting

The subject matter refers:



We are in receipt of your letter dated November 15, 2021 and note the contents therein albeit with a request for further clarification as mentioned below.

Please note that the University has been engaged in a number of key activities in the University in the recent days including the 2021 graduation ceremony which necessitated addressing your matter at this time.

The Management of KCA University promotes fair labour practices as provided under Article 41 of *the Constitution* of Kenya and is in cognizant of the fact that, in exercise of this right. KCA University staff are free to join the Kenya Private Universities Workers Union (Union) or any other association / union of their choice.

We take note of your request in the letter aforementioned and wish to bring to your attention, without prejudice, that it is NOT the responsibility of the Vice Chancellor to organise meetings for the Union. The Union may coordinate its activities including setting up meetings with the staff who are Members of the Union through its recognised representatives who shall seek grant of access from the Vice Chancellor if the meetings are to be held within the University premises.

In accordance with Section 56 of the *Labour Relations Act* (hereinafter referred to as the Act), and to enable the University grant access for the meeting, please provide the University with the names of the recognised Union representatives and proof of their identity and credentials. We may also request that the meeting be conducted outside working hours to avoid disruption of normal University operations.

We also take note of the contents of your letter to the Cabinet Secretary, Ministry of Labour and Social Protections dated November 15, 2021, in which letter, you refer to a dispute between the Union and the Management of KCA University. The alleged dispute is not within the knowledge of the University Management. The University has not been served with a copy of the alleged dispute in the prescribed form and manner as required by Section 62 of the *Labour Relations Act*.

In the exercise of Articles 35, 41, 47, 48, 50 and 159 of *the Constitution* of Kenya and 62 of the Act. please provide the University with details of the alleged dispute through your named designated KCA University Chapter Representative. The University wishes to invoke the right of reply as provided in Section 63 of the Act.

KCA University seeks to provide its employees with reasonable working conditions in accordance with *the Constitution* of Kenya, the *Employment Act*, *Labour Relations Act* and all relevant written laws and will be happy to work with the Union within the law to ensure that this is achieved.

Please contact the undersigned for any further information and/or clarification

Yours Sincerely,

Prof. Isaiah I. C. Wakindiki, PhD., Pr. Sci. Nat.

Professor of Soil Science



Vice Chancellor & CEO” The University reiterated same position in letter of 14th December 2021.

36. The court agreed with the interpretation of section 56 of the Labour Relation Act by Justice Makau in Kenya Union of Road Contractors Engineering Workers vs. Cale Infrastructure Construction Company Ltd (2021) eKLR who held that where employers restricts access the correct approach was to initiate recognition agreement in terms of section 56 of the *Employment Act* to facilitate recruitment of members in the decision the court stated the union should be allowed access to report outside wrong hours which meant over lunch hour. The court noted the union could also recruit outside the premises.
37. Ocharo, J in Ruling dated 5th October 2023 recognised the union had in the past held meetings at the Petitioner’s premises without complaints.
38. In submissions the Petitioner reiterated contents of its letter dated 2nd December 2021 (APP – 8) in the 1st Respondent’s affidavit. ‘That the Petitioner promotes Article 41 of Constitution. The staff had right to join union known of choice. In accordance with section 56 of *Labour Relations Act*, to enable the University grant access, please provide the names of the recognized union representation and the Petitioner made a reasonable request that the meetings be conducted outside working hours to avoid disruption of normal university operations.’ That the request to the 1st Respondent to consider hosting union activities outside learning hours to within agreed parameter was a reasonable request. The 1st Respondent did not submit names of the authorized officials in the said letter and that is a requirement of the law.
39. The Petitioner relied on decisions of the court to the effect that issue of access ought to be addressed in the recognition agreement and with the restricted access the recognition agreement was a preclude to access to the employers premises Kenya Union of Road Constructors & Civil Engineering Workers and Kenya Private Universities Workers Union vs. USIU.
40. The Petitioner relied on decision in Chigaco Teachers Union vs. Board of Education City of Chigaco (2018) SP where it was held that state laws prohibiting union activities on school grounds during regular hours are constitutional. That the Claimant had only recruited 15 out of 185 unionisable staff and could fit in restaurant or union offices. The Petitioners submitted it was seeking protection from disruption of learning activities.
41. The Respondent submitted that it had been conducting union activities for almost 6 years before appointment of current Vice Chancellor Prof. Wakindiki. That the constitutional rights under Article 36, 41 and 47 were inalienable and cannot be donated by the Petitioner. That curtailing enjoyment of such right will only result into subjecting the workers to servitude. That in quest of their activities they have never infringed on the rights of the Petitioner under Article 40 to 42. They relied on the recommendation of the conciliator of 22nd February 2022 who recommended the Vice Chancellor be compelled to cancel mass withdraws of union members, propagated through duress, to hold relevant tripartite parties in a bid to resolve current tripartite statements, the university to be held in contempt for eliminating any avenue of ADR between the tripartite partners by use of Advocates forum, and called for labour audit on the university as pertains to worker’s remuneration and terms of contract.
42. The Respondent relied on the decision in University Academic Staff Union vs. JKUAT (2020) to effect that the employer by failing to remit union dues infringed on the union and its members rights under Article 41 of Constitution.
43. The court having analysed the case in the petition found that the issue for determination in the petition was the right of access by the union to the employer premises and whether the acts of the 1st Respondent



had violated the rights of the Petitioner to quiet enjoyment of its property and right of education of the students, the employer being a university. The court found that the employer in letter of 2nd December 2021 by the VC Prof. Wakindiki had made reasonable request to the 1st Respondent to avail names of authorized officials which is a legal requirement for access to be granted and for meetings to be conducted outside the working hours to avoid disruption of normal university operations.

44. In defiance, the Respondents issued a notice of meeting at the employer premises, the union issued a notice dated 08/02/2022 titled Employees Trade Union Education Meeting. The meeting was to be held at the university Hall Main Campus on 9th February 2022 10 – 12 noon. Management meeting on issues affecting employees at the university as per orders of Ministry of Labour Social Protection 12.30 to 2.30 p.m. employees meeting. The agenda included prayers, introduction of union officials to employees by management, General Secretary take on trade union laws, issues affecting employees and CBA and its usefulness and membership drive. The court noted 9th February 2022 was a Wednesday. The meeting was called during working hours meaning disruption of work. That cannot be accepted by the court as it is a violation of the right to access under section 56 (2) a) of the Labour Relations Act.
45. The petitioner relied on a decision by Kenya Private Universities Workers Union v United States International University (2017)e KLR. . In the case the claimant, Kenya Private Universities Workers Union, by application dated 14th June, 2017 filed under the provisions of section 12 of the Employment and Labour Relations Court Act, 2011 and sections 56 and 74 of the Labour Relations Act, 2007 and seeking for order that;

Prohibitory orders be issued against the respondent to allow the applicant/claimant to access both potential members till the hearing and determination of this application.”Justice Mbaru pronounced decision as follows:-

‘14. Access to an employer’s premises by a trade union is addressed under section 56 of the LRA, as follows;

56. Trade union access to employer’s premises

- (1) Without limiting the matters that may be dealt with in a recognition agreement, a recognition agreement shall provide for an employer to grant a trade union reasonable access to the employers premises for officials or authorised representatives of the trade union to pursue the lawful activities of the trade union, including but not limited to—
- (a) recruiting members for the trade union;
 - (b) holding meetings with members of the trade union and other employees outside of working hours;
 - (c) representing members of the trade unions in dealings with the employer; and
 - (d) conducting ballots in accordance with the constitution of the trade union.



15. My reading of the above provisions is that access to the employer premises by the trade union is a matter that should be addressed in a Recognition Agreement. Such should address recruitment, holding of meetings, representations and conducting of ballots. The question of Recognition Agreement, how it is achieved, agreed upon and executed is addressed under section 54 of the LRA. Such is not a matter in issue herein but with the question of access to the respondent premises, the claimant ought to address the same before seeking access to the respondent premises through the court.”

46. Further a decision by Justice Nzioki wa Makau in Kenya Union of Road Contractors and Civil Engineering Workers v Cale Infrastructure Construction Company Limited [2021] eKLR determined issue of access where there was no recognition agreement like in the instant case as follows:-⁴. The dispute before the Court is on access. The provisions related to a recognition agreement under Section 54 and 56 under Part VII of the *Labour Relations Act* are focal. Section 56 provides as follows:-

56.

- (1) Without limiting the matters that may be dealt with in a recognition agreement, a recognition agreement shall provide for an employer to grant a trade union reasonable access to the employers premises for officials or authorised representatives of the trade union to pursue the lawful activities of the trade union, including but not limited to—
 - (a) recruiting members for the trade union;
 - (b) holding meetings with members of the trade union and other employees outside of working hours;

5. The arguments before the Court are the classical egg v chicken kind. What comes first? Is it the recognition agreement or is it the access? In my view where there is unfettered access to the employees or where there is an official (shopsteward) in the establishment then the question of access is moot. However, where the employer restricts entry to the premises as is the case in most establishments, the correct approach is to initiate the recognition agreement in terms of Section 56 of the *Employment Act* to facilitate the recruitment of members at the establishment. In this case, there being no access the recognition agreement is necessary as a prelude to recruitment as I do hereby find. Having so found, is the order for access merited? In my considered view, the Respondent should permit reasonable access and there shall be no need for the involvement of the National Police Service during the exercise which should be for 2 weeks and regulated by the employer as it deems fit since Section 56 provides for meetings outside working hours which means the recruitment could be over lunch hour. In any event the Union has no impediment to recruit the members outside the premises.”

47. The court noted that the Petitioner in letter by Prof Wakindiki , the Vice Chancellor and CEO dated 2nd February 2021 (APP-8) stated as follows:-⁶

We are in receipt of your letter dated November 15, 2021 and note the contents therein albeit with a request for further clarification as mentioned below.



Please note that the University has been engaged in a number of key activities in the University in the recent days including the 2021 graduation ceremony which necessitated addressing your matter at this time.

The Management of KCA University promotes fair labour practices as provided under Article 41 of *the Constitution* of Kenya and is in cognizant of the fact that, in exercise of this right, KCA University staff are free to join the Kenya Private Universities Workers Union (Union) or any other association / union of their choice.

We take note of your request in the letter aforementioned and wish to bring to your attention, without prejudice, that it is NOT the responsibility of the Vice Chancellor to organise meetings for the Union.setting up meetings with the staff who are Members of the Union through its recognised representatives who shall seek grant of access from the Vice Chancellor if the meetings are to be held within the University premises.

In accordance with Section 56 of the *Labour Relations Act* (hereinafter referred to as the Act), and to enable the University grant access for the meeting, please provide the University with the names of the recognised Union representatives and proof of their identity and credentials. We may also request that the meeting be conducted outside working hours to avoid disruption of normal University operations.

We also take note of the contents of your letter to the Cabinet Secretary, Ministry of Labour and Social Protections dated November 15, 2021, in which letter, you refer to a dispute between the Union and the Management of KCA University. The alleged dispute is not within the knowledge of the University Management. The University has not been served with a copy of the alleged dispute in the prescribed form and manner as required by Section 62 of the *Labour Relations Act*.” The court concluded the substantive orders of prohibition and permanent injunction under the instant petition were inconsistent with the said letter in which the Petitioner was willing to give access on condition of the union sharing names of the recognized officials and their identity. The court upheld the right to fair labour practices under Article 41 of *the Constitution* and found the prayers in the petition as framed are meant to stifle unionization and the activities of the union. At the same time the court recognized that union activities are regulated under the *Labour Relations Act* and the union cannot act like a bully and impose itself into the employer’s premises. The court took exception to the email of the union sent on 8th February 2022 in which it used uncouth language. The union should strive for harmonious relationships with the employer as it pursues recognition agreement. Such language is not helpful to the union cause.

48. The court upheld the decision of justice Nzioki wa Makau Kenya Union of Road Contractors and Civil Engineering Workers v Cale Infrastructure Construction Company Limited [2021] e KLR and the position of the Registrar of Trade Unions in her affidavit dated 28th march 2022 that ;-

‘6. That the interested party submits that it is good practice for the trade union to liaise with the Employer every time the union intends to carry out any activity within the Employer’s premises as invading the employer’s premises without their knowledge is tantamount to trespass.

That the interested party further avers that the employers upon request by the trade union should also allow the trade union access to its premises and allow employees wishing to be addressed by the union to participate.”

49. The Respondent should comply with the letter by the Vice Chancellor of 8th February 2022 and submit the names of the registered officials of the union as requested and their identity documents and



further on compliance the university should permit reasonable access which should be for 2 weeks and regulated by the employer as it deems fit since Section 56 provides for meetings outside working hours which means the recruitment could be over lunch hour. In any event the Union has no impediment to recruit the members outside the premises and can continue to do outside the employer's premises after lapse of the two weeks(Kenya Union of Road Contractors and Civil Engineering Workers v Cale Infrastructure Construction Company Limited [2021] e KLR) . On the authority cited by the respondent, there was issue of union dues deductions before the court. Of course after recruitment and compliance with section 48 of the Labour Relations Act deductions and remittance follow under the law. That is not an issue before the court.

50. In view of the foregoing and in order to foster industrial relations between the parties the court in determination of the petition grants the following orders:-
- a. A declaration that the respondent in seeking to forcibly enter into the premises of the petitioner without seeking permission is unlawful and amounts to trespass in violation of Article 40 and right to education under the Constitution.
 - b. Order under prayer g, The Respondents to comply with Petitioner's letter of 2nd December 2021 and on compliance, the Petitioner to permit reasonable access which should be for 2 weeks and regulated by the employer as it deems fit since Section 56 of the Labour Relations Act provides for meetings outside working hours which means the recruitment could be over lunch hour.
 - c. No order as to costs taking into account labour relations between the parties.

51. It is so Ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 28TH DAY OF MARCH, 2025.

J.W. KELI,

JUDGE.

In the Presence of:

Court Assistant: Otieno

Petitioner: - Ms. Koome

Respondent: absent

