



Pawa Africa v Cabinet Secretary, Ministry of Education & 3 others (Miscellaneous Application E357 of 2024) [2025] KEELRC 851 (KLR) (14 March 2025) (Ruling)

Neutral citation: [2025] KEELRC 851 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E357 OF 2024**

**SC RUTTO, J
MARCH 14, 2025**

BETWEEN

PAWA AFRICA APPLICANT

AND

CABINET SECRETARY, MINISTRY OF EDUCATION 1ST RESPONDENT

HON ATTORNEY GENERAL 2ND RESPONDENT

ROMANUS ODHIAMBO 3RD RESPONDENT

VICTORIA NGUMI 4TH RESPONDENT

RULING

1. Before me for determination is a Notice of Motion dated 5th November 2024, filed by the Applicant, seeking an order that; the Court grants a waiver of filing fees in the Petition No. ELRC PET/ E130/2024, and do action/ direct actioning of the Petition to proceed to hearing and determination.
2. The Application is premised on the grounds stated on the face of the Motion. Essentially the grounds relied upon by the Applicant are that: -
 1. The Main Application is already filed under ELRCPET/E130/2024 ready for hearing and determination upon grant of this waiver.
 2. The substantive matter is a Public Interest Petition no E130/2024 challenging the arbitrary appointments of individuals to positions as Vice Chancellors of Public Universities and their continued interference with the proper running and management of the universities without following the due process, the *Universities Act* 2012, other laws guiding such appointments and the constitutional principles.



3. The substantive matter is a Public Interest Petition in which the petitioner has no direct personal or financial gain except furtherance of the rule of law, public interest, and constitutional principles.
3. The Application was met with opposition from the 1st, 2nd and 3rd Respondents. In this regard, the 1st and 2nd Respondent through Ms. Karbolo, Senior State Counsel, filed Grounds of Opposition dated 23rd January 2025 in which she contends that:
 1. The Petitioner is not a state organ at the national and/or county level and is thus not eligible for waiver of court filing fees.
 2. The Petitioner has not adduced any evidence and/or documentation and/or at all, to show its financial incapacity and/or its inability to pay court filing fees.
 3. The application violates the doctrine of exhaustion and/or ripeness as the Petitioner has not exhausted all mechanisms before approaching this Honourable Court, key being liaising with the office of the Registrar, Employment and Labour Relations Court on the same as per the letter dated 6th November 2024 and attached to the application.
 4. The Petitioner has failed to adduce any evidence and/or registration documents of it being a civil society organization specializing in socio-economic development, social justice, human rights and governance in the Republic of Kenya.
 5. The application is an abuse of the court process and a waste of precious judicial time and ought to be struck out with costs.
4. Opposing the Application, Prof. Romanus Odhiambo, the 3rd Respondent herein, filed a Replying Affidavit sworn on 14th January 2025 in which he deposes that:
 1. The Applicant has intentionally failed to disclose under which legal regime it is registered so as to give credence to its averments.
 2. The Applicant has not filed any statement to help the Court in its certification that it is unable to pay the filing fees to institute ELRC Petition No. E130 of 2024.
 3. The Applicant has not averred anywhere in its application and pleadings that it is unable to pay the prescribed filing fees, and instead relies on the assertion that this suit is a public interest case, which in itself does not satisfy Rule 81(2) of the Employment and Labour Relations Court (Procedure) Rules.
 4. The Applicant has not annexed to its Supporting Affidavit any proof to demonstrate that it qualifies as a pauper.
 5. The present application therefore fails to satisfy the requirements provided for under Rule 81(2) of the Employment and Labour Relations Court (Procedure) Rules, requiring the Applicant to demonstrate and satisfy that it does not possess the means to pay the prescribed filing fees.
 6. Contrary to the allegations contained in the Applicant's Petition, his (3rd Respondent) contract of service was renewed for a further term of five years in accordance with Section 39(3) of the [Universities Act](#) and Clause 13 of his contract of service.
 7. The Applicant's Petition is based on a misapprehension of Section 39 of the [Universities Act](#) and therefore lacks a lawful foundation.



8. The Applicant does not have a cause of action in the main ELRC Petition No. E130 of 2024.
5. Contemporaneously filed with the 3rd Respondent's Replying Affidavit, was the Grounds of Opposition dated 14th January 2025, in which his Advocates on record have contended that:
 1. The suit has been instituted by way of a Plaint disguised as an employment Petition, contrary to the provisions of Rule 7 and/or Rule 10 (1) of the Employment and Labour Relations Court (Procedure) Rules. That it is therefore not clear to the 3rd Respondent whether the claims he ought to respond to are in the form of a Plaint, Statement of Claim or Petition, in order for the 3rd Respondent to respond appropriately.
 2. The Applicant has failed to satisfy the principles set out in the *locus classicus* case of *Anarita Karimi Njeru v The Republic (1976-1980) KLR 1272*.
 3. The Applicant has failed to disclose with specificity any cause of action against the 3rd Respondent, being an employee of the Council of Meru University of Science and Technology.
 4. The misjoinder of persons has made it impossible for the 3rd Respondent to respond to every alleged claim.
 5. The orders sought by the Applicant, if granted, cannot be implemented by the 3rd Respondent. That the 3rd Respondent is not the appointing authority and as such, the Council of Meru University of Science and Technology ought to have been joined.
 6. The suit challenges the appointments of the 3rd and 4th Respondents who were appointed separately to serve in different universities by different University Councils.
 7. The allegations of impropriety on the part of the 3rd and 4th Respondents as Vice Chancellors of two separate institutions cannot apply jointly. That there is therefore, a misjoinder of causes of action by the Applicant which renders the pleadings incompetent and thus bad in law and incurably defective.
 8. This Honorable Court lacks the jurisdiction to hear and determine this matter given that a cause of action, if any, will arise in Meru County where the 3rd Respondent and his employer are based.
6. The 4th Respondent did not respond to the Application.

Submissions

7. Pursuant to the directions issued by the Court on 16th January 2025, the parties filed written submissions, in support of their respective positions.
8. The Applicant has submitted that it has no financial or personal gain in the Petition except public interest, furtherance of the rule of law and constitutional principles. According to the Applicant, it is a non-profit organization with no expected financial gain and the outcome of the Application, except public interest and responsibility to uphold the rule of law. It is the Applicant's position that this Court has the exclusive discretion to grant the waiver, the objection of the Respondents notwithstanding.
9. On the part of the 1st and 2nd Respondents, it has been submitted that the Applicant has failed to provide this Court with actual documents and particulars of its inability to pay court filing fees. In support of this position, reliance has been placed on the case of *Lemsoft Consultancy Ltd v Kabasa Guest House Ltd & another [2018] KECA 841 (KLR)*.



10. The 1st and 2nd Respondents have further posited that the Applicant has not exhausted the set out procedure regarding the waiver of court filing fees. In the same vein, the 1st and 2nd Respondents have submitted that the Applicant has not written to the relevant Registrar of this Court as required under the procedure but instead chose to file the present Application.
11. On the other hand, the 3rd Respondent has submitted that the Applicant did not take into account the Respondent's location as well as where the causes of action arose when invoking the territorial jurisdiction of this Court. On this issue, the 3rd Respondent has submitted that any dispute concerning the employment or the renewal of his employment term ought to be heard by the Employment and Labour Relations Court at Meru. To reinforce its arguments, the 3rd Respondent has sought to rely on the case of *Swiss Deli Trade (Panama) Inc v Privamnuts EPZ Kenya Limited* [2020] eKLR.
12. Referencing the case of *Mbugua & another v Attorney General & 15 others* (Petition 3 of 2013) [2013] KESC 10 (KLR), the 3rd Respondent has further submitted that the Applicant has failed to demonstrate to this Court that he is unable to pay the prescribed filing fees necessary for the institution and hearing of this suit.
13. The 3rd Respondent has further argued that the Complaint dated 30th July 2024 is incompetent as drawn with allegations against the 3rd and 4th Respondents jointly and as such, the cases against the 3rd and 4th Respondents ought not to be heard together.

Analysis and Determination

14. As I can discern from the Application before me, the Grounds of Opposition by the 1st, 2nd and 3rd Respondents, the 3rd Respondent's Replying Affidavit and the rival submissions, the singular issue arising for determination is whether the Court should grant the Applicant waiver of court fees with respect to ELRC Pet. No. E130/2024.
15. The gist of the Application by the Applicant is that the substantive matter is a public interest matter in which it has no direct personal or financial gain except the furtherance of the rule of law, public interest and constitutional principles.
16. With respect to waiver of court fees by this Court, Rule 81(2) of the Employment and Labour Relations Court (ELRC) (Procedure) Rules 2024, provides as follows:

[81](2) The Court may, on application by a party in writing and upon being satisfied that the party does not possess sufficient means to pay the fee prescribed by law, waive all or any fee chargeable.
Underlined for emphasis
17. It is noteworthy that in the case herein, the Applicant has not indicated let alone suggested that he does not possess sufficient means to pay the court fees prescribed under the Rules.
18. Indeed, the Application is solely based on the claim that the substantive matter falls within the realm of public interest litigation and is in furtherance of the rule of law, public interest and constitutional principles.
19. My understanding of Rule 81(2) of this Court's Rules, is that the primary consideration by the Court in waiver of court fees is proof that the applicant does not possess sufficient means to pay the prescribed fees. As stated herein, the Applicant herein has not in any way alluded to its means.
20. Even so, the Applicant was still required to demonstrate to this Court that it lacks the means to pay the prescribed court fees. In this regard, the Applicant did not file an affidavit of means or such other



documentary evidence to prove that indeed, it does not possess the means to pay the prescribed court fees.

21. In light of the foregoing, the Court finds that the Applicant has failed to satisfy the condition stipulated under Rule 81(2) of the ELRC (Procedure) Rules 2024, for waiver of court fees.

22. Accordingly, the Application dated 5th November 2024 is declined with no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14TH DAY OF MARCH 2025.

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STELLA RUTTO

JUDGE

In the presence of:

Mr. Gitaari Director of the Applicant

Ms. Karbolo for the 1st and 2nd Respondents

Ms. Ndubi instructed by Mr. Walukwe for the 3rd Respondent

No appearance for the 4th Respondent

Millicent Court Assistant

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 15th March 2020 and subsequent directions of 21st 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.

