



Wainaina v Principal Secretary Ministry of Education State Department for Higher Education & Research & 4 others (Petition E011, E022 & E025 of 2025 (Consolidated)) [2025] KEELRC 1203 (KLR) (30 April 2025) (Ruling)

Neutral citation: [2025] KEELRC 1203 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E011, E022 & E025 OF 2025 (CONSOLIDATED)**

HS WASILWA, J

APRIL 30, 2025

BETWEEN

PROFESSOR PAUL KURIA WAINAINA PETITIONER

AND

PRINCIPAL SECRETARY MINISTRY OF EDUCATION STATE DEPARTMENT FOR HIGHER EDUCATION & RESEARCH 1ST RESPONDENT

CABINENT SECRETARY, MINISTRY OF EDUCATION 2ND RESPONDENT

COUNCIL OF KENYATTA UNIVERSITY 3RD RESPONDENT

PUBLIC SERVICE COMMISSION 4TH RESPONDENT

ATTORNEY GENERAL 5TH RESPONDENT

RULING

1. Pursuant to a court order of 6th March 2025, this Court directed that the Petition herein be consolidated together with two other matters subsequently raising similar issues namely ELRC PET E022 of 2025; Kenya Universities Staff Union - Kenyatta University Branch V Kenyatta University and 2 Others and ELRCPET E025 of 2025; Council of Kenyatta University VS The Public Service Commission and Another.
2. The Court was to render its ruling on the matter on 12th March 2025, however, the same was differed and the Court ordered that the matter be subjected to conciliation pursuant to Article 165 of the Constitution read together with Section 15 of the Employment and Labour Relations Court (ELRC) Act which allows the Court to subject parties to alternative dispute resolution where need be.
3. In respect to petition herein dated 30th January 2025, it was instituted by the Petitioner who seeks the following reliefs: -



- I. A Declaration be and is hereby issued that the directives by the Chair Kenyatta University Council through the letter dated 11th December 2024 purporting to extend the Petitioner's leave without a justifiable cause amounts to a violation of Articles 10, 20(1), 25 (c), 27(1), 41, 47, 48, 50, as read together with Universities Act No. 42 of 2021; Employment Act 2007; the Public Service Commission Act, Cap 185 and the Fair Administrative Action Act No. 4 of 2015 and the decision and any action thereto are invalid, null and void ab initio.
- II. A Declaration be and is hereby issued that the advert dated 22nd January, 2025 purporting to declare and advertise a purported vacancy in the office of the Vice Chancellor, Kenyatta University amounts to a violation of Articles 10, 20(1), 25 (c), 27(1), 41, 47, 48, 50, as read together with Universities Act No. 42 of 2021; Employment Act 2007; the Public Service Commission Act, Cap 185 and the Fair Administrative Action Act No. 4 of 2015 and the decision and any action thereto are invalid, null and void ab initio as it violates the Petitioner's legitimate expectation.
- III. An Order of certiorari be and is hereby issued calling into this court and quashing the decisions and directives made by the 3rd & 4th Respondents on 11th December 2024 and 22nd January 2025 sending the Petitioner Prof Paul Kuria Wainaina, the Vice-Chancellor on an extended compulsory leave and subsequently purporting to advertise a vacancy in the position of Vice Chancellor, Kenyatta University, without any sufficient notice and/or reasons.
- IV. An Order of mandamus be and is hereby issued pursuant to Article 23 of the Constitution directing the Council of Kenyatta University and the Public Service Commission to allow to resume his duties as Vice Chancellor on 31st January 2025, and to serve as such until the end of his term of office, on 26th January 2026.
- V. An Order of prohibition restraining the 3rd and 4th Respondents from acting on their impugned directives of 11th December, 2024 and 22nd January, 2025.
- VI. An Order of compensation pursuant to Article 23 of the Constitution directing the Respondents jointly and severally to pay damages to the Petitioner herein for the violation and contravention of his fundamental rights and freedoms by being sent on extended compulsory leave before his term of office comes to an end.
- VII. Any other relief and/or orders the Honourable court deems appropriate, just, and/or fit to grant.
- VIII. The Respondents bear cost of this Petition.

Petitioner's Case

4. The Petitioner states that pursuant to a letter by the Cabinet Secretary, Ministry of Education, he was appointed as the Vice Chancellor of Kenyatta University on 26th January 2018 for a term of 5 years and he signed a contract of service on 2nd March 2018.
5. Before his appointment, he was an employee of Kenyatta University since 2005 and further upon expiry of his term as Vice Chancellor, his term was renewed for 3 years from 26th January 2023 to 26th January 2026.
6. The Petitioner states that he accumulated 202 leave days while serving his first term as Vice Chancellor and subsequently took these leave days which was approved from 15th April 2024 to 30th January 2025. He was to return back to office until expiry of this term.



7. The Petitioner states that under clause 24 of his contract of service he is entitled to sabbatical leave at the end of his tenure, however, on 11th December 2024, the 3rd Respondent wrote to him extending his leave to utilize both sabbatical and annual leave days.
8. In response, the Petitioner vide a letter dated 13th January 2025, indicated that the 3rd Respondent's action is unjustified as his Contract of Service for the Vice Chancellor was to expire on 26th January 2026 and according to Clause 11.2 of the Terms of Service for Academic Staff and Clause 29(i) and (ii) of the UASU 2013/2017 CBA he was set to retire as a Professor on 30th June 2026.
9. The Petitioner states that the 3rd Respondent responded to his letter on 16th January 2025 reiterating that he proceeds for extended compulsory leave pending his mandatory retirement on 15th July, 2025. The 3rd Respondent further termed the Terms of Service for Academic Staff and the CBA as being in contravention of government policy.
10. To his surprise, on 22nd January 2025 the 4th Respondent advertised the position of the Vice Chancellor, Kenyatta University vide an advert on a local daily newspaper, a position he lawfully held and still holds.
11. The Petitioner states that in response, his advocates wrote to the 3rd Respondent asking them to allow him to resume duty as Vice Chancellor on 31st January 2025 until completion of his term and acknowledge his retirement date as a Professor is 30th June 2026.
12. The Petitioner's advocates further wrote to the 2nd Respondent asking him to direct the 3rd Respondent to allow him to resume duties as Vice Chancellor on 31st January 2025 and adhere to the Terms of Service for Academic Staff and the CBA with respect to the retirement date. They further wrote to the 4th Respondent asking them to shed light on the purported vacancy in the office of the Vice Chancellor, Kenyatta University.
13. It's the Petitioner's case that the Respondents' actions are a scheme calculated to force him into premature mandatory retirement and disentitle him the benefit of serving his full term according to the Contract of Service for the Vice Chancellor, Kenyatta University, in violation of his constitutional right to fair labour practices and fair administrative action.

ELRC Petition E022 of 2025; Kenya Universities Staff Union - Kenyatta University Branch
V Chairperson, Kenyatta University and Public Service Commission Of Kenya and Cabinet
Secretary, Ministry of Education

14. By a Petition dated 18th February 2025, the Kenya Universities Staff Union - Kenyatta University Branch (KUSU) sought the following orders: -
 - a. A declaration be and is hereby issued that the Respondents have violated the [Constitution](#) and relevant labour laws by appointing Prof. Waceke Wanjohi as Acting Vice Chancellor of Kenyatta University beyond the constitutional and statutory 180 days.
 - b. An order revoking and or directing the Council of Kenyatta University to revoke the appointment of Prof. Waceke Wanjohi as Acting Vice Chancellor of Kenyatta University.
 - c. Any other and or further reliefs that this Honourable Court may deem fit and just to grant in the circumstances.
15. KUSU avers that on 11th April, 2024, the 3rd Respondent designated Prof. Waceke Wanjohi as Acting Vice Chancellor in the absence of the substantive Vice Chancellor who was to proceed on leave with



effect from 15th April 2024, which leave has since lapsed but the Council of Kenyatta University has failed to allow him back to office.

16. It is KUSU's case that the Respondents have violated the Constitution, Universities Act, Public Service Commission Act, and Kenyatta University Charter by illegally keeping in office Prof. Waceke Wanjohi as Acting Vice Chancellor beyond the statutory 180 days and continuing to block Prof. Paul Wainaina from resuming duty as the substantive Vice Chancellor even though his leave has ended.

ELRC Petition E025 of 2025; Council of Kenyatta University V The Public Service Commission and Prof Paul Kuria Wainaina

17. Vide ELRC Petition E025 of 2025 dated 20th February 2025, the Council of Kenyatta University (the 3rd Respondent herein) sought for the following reliefs; -

- a. A declaration be and is hereby issued declaring that the 1st Respondent's letter dated 13th February 2025 (Ref: PSC/LEG/006/25/018 (13)) violates Article 234 (2) of the Constitution of Kenya, 2010.
- b. A declaration be and is hereby issued declaring that the 1st Respondent's letter dated 13th February 2025 (Ref: PSC/LEG/006/25/018 (13)) is illegal, null and void in breach of Section 35(1)(a)(v) of the Universities Act Cap. 210 Laws of Kenya
- c. A permanent injunction restraining the 1st and 2nd Respondents whether by themselves, their officers, servants, agents and/or otherwise from effecting the direction for the 2nd Respondent's resumption of office at Kenyatta University pursuant to the direction in the 1st Respondent's letter dated 13th February 2025 (Ref: PSC/LEG/006/25/018 (13))
- d. An Order of Certiorari and is hereby issued to remove into this Honourable Court for purposes of being quashed the 1st Respondent's letter dated 13th February 2025 (Ref: PSC/LEG/006/25/018 (13))
- e. Any other relief this Honourable Court deems fit to grant to meet the ends of justice.
- f. Costs of this Petition; and
- g. Interest on relief (f) above at court rates from the date of filing this Petition until payment in full.

18. It is the 3rd Respondent's (the Petitioner in ELRC Petition E025 of 2025) case that vide a letter issued on 25th October 2010, the Petitioner was appointed as Deputy Vice Chancellor for a period of 5 years. He held this position until his appointment as Acting Vice Chancellor for a period of 3 months effective 21st March 2016 and the same was renewed continuously until January 2018.

19. The 3rd Respondent avers that vide a letter dated 26th January 2018, the Petitioner was notified of his appointment as the University's Vice Chancellor for a period of 5 years which appointment was confirmed by the signing of the Contract of Service for the position dated 2nd March 2018. The contract was subsequently renewed for a period of 3 years with effect from 26th January 2023 vide a letter dated 25th November 2022 which expressly stated the terms and conditions of service in the Contract of Service remained the same.

20. The 3rd Respondent avers that the Contract of Service enumerated some key terms namely:

- a. Clause 24 which provides that the Petitioner would be entitled to sabbatical leave for 2 months for every year served.



- b. Clause 34 (k) which provides that the Petitioner shall, among others, be subject to all other relevant laws, rules and regulations governing the running and management of public institutions. These include the [Public Service Commission Act](#) (Cap.185, Laws of Kenya and the [Universities Act](#) in so far as they are concerned and applicable.
 - c. Clause 35 on Interpretation of the Contract, which provides that the interpretation of the terms and conditions of service in the said contract rest with the Petitioner.
21. It is the 3rd Respondent's case that it had a special sitting on 10th December 2024 which revisited the Petitioner's leave records and noted he had not utilized his sabbatical leave days at the end of his tenure as the Deputy Vice Chancellor from 25th January 2010 to 25th January 2015.
22. It was further noted that the Petitioner was entitled to annual and terminal leave for the year 2025 before attaining the mandatory retirement age on 15th July 2025; per the computation, he had 51 days remaining before retirement.
23. In view of the foregoing, the 3rd Respondent vide a letter dated 11th December 2024 informed the Petitioner of the resolution of the special sitting that he takes his sabbatical leave days earned while serving in senior administrative positions in the University and that his Contract of Service was to lapse on 15th July 2025 once he attains the mandatory retirement age of 75 years on 15th July 2025.
24. The 3rd Respondent avers that aggrieved by its letter of 11th December 2025, the Petitioner filed the petition herein (ELRC Petition No. E011 of 2025) seeking orders to quash its decision contained in the letter dated 11th December 2024.
25. Before ELRC Petition No. E011 of 2025 could be dispensed with, the Public Service Commission wrote to the 3rd Respondent on 13th February 2025 directing it to rescind the letter of 11th December 2024 and PSC further directed the Petitioner to resume office at the University with immediate effect.
26. It is the 3rd Respondent's case that PSC's directions in its letter of 13th February 2025 was in excess of its constitutional and statutory mandate, powers and duties under Article 234 read together with Article 248 of the [Constitution](#), Section 5 of the [Public Service Commission Act](#), Cap 185, Laws of Kenya and Section 35(1)(a)(v) of the [Universities Act](#) Cap 210, Laws of Kenya as it purports to interfere with the 3rd Respondent's own statutory powers and duties in the appointment of the Vice Chancellor of the University.

Conciliation Report

27. Having considered the pleadings in the three consolidated petitions herein, the Court vide its order of 6th March 2025 directed that the matter be subjected to conciliation.
28. Pursuant to this order, the Commissioner of Labour vide its letter dated 11th March 2025, appointed Mr. David Njagi, Assistant Commissioner for Labour as a Conciliator. Subsequently, through his letter dated 12th March 2025, the Conciliator as a matter of urgency directed the parties herein to submit their proposals by the end of 14th March 2025 and invited them for a conciliation meeting on 17th March 2025.
29. The Report stated that during the preliminary meeting on 17th March 2025, each party was given time to state their case and their prayers; and they stood by their proposals submitted in court. The matter was adjourned and reconvened on 27th March 2024.



30. During the second meeting, the Conciliators decided to meet the parties separately to allow the parties to open on their proposals. They began with the 3rd Respondent who after a lengthy meeting agreed there is need to have alternative proposals for a settlement of this matter and in response communicated that they were open to discussions on any alternative proposal from the Petitioner.
31. The Conciliators then engaged the Petitioner who proposed as follows: - (a) he is allowed to resume his duties and finish his contract as provided in his employment contract which end in January 2026; and (b) payment of his salaries and allowances for the remaining period as Vice Chancellor up to January 2026 and thereafter payment of his salaries and allowances from February 2026 up to June 2026 as a Professor when he retires as per the CBA.
32. The Kenya Universities Staff Union - Kenyatta University Branch on their part reiterated that the Acting Vice Chancellor is in office illegally and against the acting appointment in Public service. The Union proposed that the Acting Vice Chancellor vacates office by 15th April 2025 after acting for three times of six months.

Conciliators' findings

33. The Conciliators found that the Petitioner's case is unique as he is the first Vice Chancellor to retire while in office; employment contracts of all past Vice Chancellors expired before they attained the retirement age of 75 years hence they had an opportunity resume their duties as professors or quit altogether.
34. It was found that from the period the Petitioner was a Deputy Vice Chancellor to Vice Chancellor he never took both annual and sabbatical leave and the 3rd Respondent never informed him and/or directed him to proceed on leave.
35. Vide a letter dated 27th September 2023 (Ref.OP/CAB/2/1), the Chief of Staff and Head of Public Service directed officers with accumulated or unutilized leave days to proceed on leave as there will be no further commutation of unpaid leave. Subsequently, the Principal Secretary, Ministry of Education State Department for Higher Education and Research through a letter dated 9th April 2024 directed all the heads of institutions including Kenyatta University to ensure that there is full compliance to the directive.
36. In compliance with the directive, the 3rd Respondent directed the Petitioner to proceed on his annual leave of 202 days as required and handed over the running of the institution to Professor Waceke Wanjohi on acting capacity.
37. Upon expiry of the Petitioner's leave, the 3rd Respondent vide its letter dated 16th January 2025 directed the Petitioner to continue with his sabbatical, annual and terminal leave: He is currently on leave and continues to earn his salary and all allowances.
38. It is the Conciliators' finding that the Petitioner is entitled to 2 months sabbatical leave for every year completed as stipulated in his appointment letter. They established that all previous Vice Chancellors of Kenyatta University took their sabbatical leave upon completion of their contract before going back to class.
39. They further found that the Petitioner was on his second term contract for 3 years which extended beyond his official retirement age of 75 years.
40. The Conciliators further established the Public Service Commission cancelled the advertisement that they had made for the position of Vice Chancellor after realizing the professor was validly in office.



41. Lastly, the Conciliators established and noted there is trend that within Kenyatta University that officers have been acting as Vice Chancellors beyond the stipulated period leading to Kenya University Staff Union (KUSU) raising concern on its legality.

Conciliators' Recommendations

42. Based on its findings above, the Conciliators made the following recommendations as a mode of settlement of the dispute: -
43. Three-year contract signed between Professor Wainaina and the Kenyatta University council.
The conciliators opined that the contract between the Petitioner and the 3rd Respondent is binding and should be left to flow uninterrupted up to January 2026.
44. Annual, sabbatical and terminal leave
That Contract of Service entitles the Petitioner to annual, sabbatical and terminal leave and he should be allowed to enjoy the same with full pay during the life of this contract.
45. Acting Capacity
Noting that there has been a tradition of Vice Chancellors acting with renewal of the same more than twice or thrice; the Conciliators stated that this does not augur well with provisions of the Office and opined that the institutions such magnitude cannot be left without an administrator even for a day. The Conciliators recommended that the authorities should find a way of ensuring that the law is fully complied.
46. Petitioner's prayers
Resumption of Duty
The Conciliators found that the Petitioner is still on duty by virtue of being on leave and enjoying all his package as a Vice Chancellor.
47. Payment from January 2026 up to July 2026.
This is based on the Petitioner's assumption that after the expiry of his contract, the Collective Bargaining Agreement Between Kenyatta University and Kenya Universities Staff Union should apply hence his retirement age of 75 years falling on July 2025 he should be allowed to retire in June 2026. Therefore, he expects to revert to teaching as a professor.
48. The Conciliators opined that the Petitioner retirement in July 2025 falls within his 3-year contract while he is the Vice Chancellor and the Chief Executive Officer of the Institution cannot be a Union member, otherwise it would have applied if he would not have attained 75 years mandatory retirement age by then.
49. Payment of the remaining period of his contract
The Conciliators opined that the prayer for payment of remaining contract from April 2025 to January 2026 be granted and paid accordingly.

Petitioner's Submissions

50. It is the Petitioner's submission that his contract of service was renewed for a term of 3 years from 26th January 2023 to 26th January 2026; this was admitted by the 3rd Respondent in its proposal to the Conciliators that the Petitioner has a valid contract expiring on 26th January 2026. Therefore, Petitioner



agrees with the Conciliators' recommendation that his contract of service as Vice Chancellor be allowed to flow uninterrupted up to 26th January 2026.

51. The Petitioner submitted that Clause 29(i) and (ii) of the 2013/2017 CBA between UASU and the 3rd Respondent provides that a member of staff who reaches the retirement age will be required to cease duty on the next 30th June following the date that (s)he attains retirement age. Further, Section 59 of the [Labour Relations Act](#) provides that a collective bargaining agreement binds the parties to the agreement and all unionisable employees employed by the employer and it shall be incorporated into the contract of employment of every employee covered by the CBA.
52. It is the Petitioner's submission that he is covered by the CBA as he was first employed as a Professor on a permanent and pensionable basis before he was appointed Vice Chancellor and he did not cease being a professor upon appointment as Vice Chancellor. Therefore, as per Clause 11.2 of the Terms of Service for Academic Staff and Clause 29(i) and (ii) of the 2013/2017 CBA, he is supposed to exit service on 30th June 2026.

3rd Respondent's Submissions

53. The 3rd Respondent submitted on six issues: - when is the Petitioner set to retire from the university? whether a Collective Bargaining Agreement or a contract can extend service beyond the mandatory retirement age; what is the effect of the Petitioner's retirement on his contract vis a vis his alleged legitimate expectation?; what is the correct position on the Petitioner's annual, sabbatical and terminal leave entitlement?; whether Prof. Waceke Wanjohi's appointment as the University's Acting Vice Chancellor is valid; and what action should be taken by the 4th Respondent.
54. On the first issue, the 3rd Respondent submitted that clause 12.25.2 of the University's Human Resource Policies and Procedures Manual, 2019 provides the mandatory retirement age as 75 years which was not contested during conciliation. Therefore, it is clear that the Petitioner shall retire from the University on 15th July 2025 once he attains the age of 75 years.
55. On the second issue, the 3rd Respondent submitted that the 2013-2017 CBA is no longer applicable as it was succeeded by the CBA between the Inter-Public Universities Councils Consultative Forum (IPUCCF), the Federation of Kenya Employers (FKE) and the Universities Academic Staff Union (UASU) dated 23rd November 2024 currently in force which provides under clause 2 (ii) :- the retirement age for all academic members of staff shall be harmonised and set at 74 years for lecturers, senior lecturers, associate professor and professor." Therefore, the Petitioner has no cause to invoke clause 11.2 of the Terms of Service to support his allegation that he is set to retire on 30th June 2025.
56. The 3rd Respondent submitted that a CBA, Terms of Service or any other agreement cannot override provisions of the law to alter the Petitioner's retirement in so far as to extend it beyond the mandatory limit. It relied on Kenya Universities Staff Union v Council of Jomo Kenyatta University of Agriculture and Technology & another [2023] KEELRC 1754 (KLR) where the Court stated:-

“ 18. Therefore, the members of the Petitioner being public officers, are bound by the provisions of the aforementioned statute and were to retire upon attaining the mandatory age of retirement in the public service being 60 years.

19. As to the import of Clause 19.1 (d) of the CBA, the same cannot supersede the provisions of a statute. The CBA ought to be interpreted in line with the existing relevant statutes and where there is inconsistency, the CBA must give way. As was rightfully held by the Court of Appeal in its decision in Ben



Chikamai and another vs Machithi and Another, Civil Appeal No 313 of 2018; [2020] eKLR, a Press Statement, a policy paper or letter cannot override clear provisions of the law. The same case applies to CBAs.”

57. On the third issue, it is the 3rd Respondent’s case that the Conciliator’s’ recommendation that the Petitioner’s contract ought to flow uninterrupted until 16th January 2026 may not be feasible on account of his retirement. Renewal beyond his retirement is contrary to the law. The doctrine of legitimate expectation cannot override the provisions of the law on the Petitioner’s retirement. It relied on Samuel Omutoko Mabinda v Riley Services Limited [2019] KEELRC 2071 (KLR) where the Court held:
- “In this case, the reason for the termination was attainment of the mandatory retirement age. The Respondent contended that the Claimant’s retirement was long overdue, and that fact was admitted by the claimant by confirming that as at the time of the retirement he was 58 years old. The Respondent relied on regulation 17 (2) (b) of the Protective Security Service Wage Order in asserting that the retirement age was 55 years but admitted that the claimant’s service was extended beyond the mandatory retirement age at the request of a client he had been assigned to. In view of the said express provision of the law that the mandatory retirement age for private security guards is 55 years, I return that the respondent had a valid and fair reason for retiring the claimant at the age of 58 years.”
58. On the fourth issue, the 3rd Respondent submitted that the Petitioner pursuant to its letter dated 11th April 2024 proceeded on his 202 leave days on 15th April 2024 and handed all instruments of authority and documents of governance in the presence of its members and university’s management. The Petitioner completed his leave on 30th January 2025.
59. In respect to sabbatical leave, the 3rd Respondent submitted that it is a benefit and not a right and it should be utilised during the pendency of his contract. Further, it forfeits upon lapse of the contract. The Petitioner had accumulated sabbatical leave when he was Deputy Vice Chancellor and he did not proceed to take it as he immediately took over as Vice Chancellor. The Petitioner accumulated 30 months sabbatical leave and the 3rd Respondent was bound to direct him to proceed on the said leave in line with the directive issued in the Circular dated 27th September 2023 (Ref .OP/CAB/2/1), by the Chief of Staff and Head of Public Service.
60. It is the 3rd Respondent’s submission that sabbatical leave cannot be taken after the Petitioner’s retirement as this unique benefit does not continue to accrue immediately he retires from public service. Therefore, the directive to the Petitioner to proceed on sabbatical leave was valid.
61. On terminal leave, the 3rd Respondent relied on clause 7.13 of the University’s Human Resource Policies and Procedures Manual which states that an officer who is due for retirement will be entitled in addition to his annual leave 30 calendar days leave pending retirement which must be taken a month preceding retirement or be forfeited. It will neither be commuted for cash nor will the officer qualify for additional leave allowance. It is the 3rd Respondent’s submission that the Petitioner retires on 15th July 2025 and he must therefore proceed on terminal leave 30 days prior by 15th June 2025.
62. In view of the foregoing, the 3rd Respondent submitted that it does not entirely agree with the Conciliators’ recommendation and that the Petitioner’s leave entitlements lapse upon attainment of his mandatory retirement age.
63. On the fifth issue, the 3rd Respondent submitted that the valid and lawful appointment and subsequent reappointment of Prof. Waceke Wanjohi as Acting Vice Chancellor were a safeguard to protect the



University's management and administration pending a substantive appointment. Therefore, the proposal for Prof. Waceke to vacate office on 15th April 2025 and resume her position as Deputy Vice Chancellor as proposed by KUSU has no basis.

64. On the sixth issue, it's the 3rd Respondent's submission that the 4th Respondent should continue and conclude the recruitment process of the substantive holder of the Vice Chancellor position. Furthermore, upon conclusion of Prof. Waceke Wanjohi's acting appointment on 14th April 2025, nothing stops the 4th Respondent from concluding the recruitment process. It submitted that this anchored on the provisions of Section 46 of the *Interpretation and General Provisions Act*.

4th Respondent's Submissions

65. The 4th Respondent began by highlighting that its submissions before the Conciliators were ignored and not captured in the report; and that the Conciliators did not inform this Court that the Attorney General did not participate in the conciliation process as directed by the Court and the Attorney General only appeared once during the process and their submissions have also not been captured in the report.
66. It is the 4th Respondent's submission that the Petitioner's contract was renewed for a period of 3 years with effective 26th January 2023 vide a letter dated 25th November 2022 which clearly stated that the terms and conditions of service remain as stated in his appointment letter of 2nd March 2018. Therefore, the 4th Respondent agree with the conciliators' findings that the contract is binding on both parties and that the Professor should be allowed to serve until 26th January 2026.
67. The 4th Respondent submitted that the initial contract of 2nd March 2018 provided that the Petitioner entitled to sabbatical leave of 2 months for every year served as Vice Chancellor further to leave days that accrue at the end of each year. The 4th Respondent submit that it agrees that the Petitioner is entitled to all the leave days accrued under the 3 year contract, however, the University cannot force the Petitioner to proceed on leave that he has not requested for, he must apply for the same.
68. On whether the CBA applies to the Petitioner, the 4th Respondent submitted that it does apply on grounds that upon appointment as DVC or VC to the same institution a professor is granted leave of absence from their permanent and pensionable position as a professor to enable them take up the contract appointment and then revert back once the contract ends. Further, while serving the contract position, the Petitioner is required to contribute a percentage as pension to his permanent and pensionable position implying he is still an employee of the university as a professor on permanent and pensionable terms; and once his term as VC expires, he reverts back to his position as a professor and the terms and conditions of the CBA apply to him from the date he reverts back and not while he is serving as a VC.
69. The 4th Respondent further submitted that the Conciliators ought to have separated the two contracts of employment as they are governed under distinct terms and conditions of service and by different instruments.
70. The 4th Respondent submitted that the Conciliators had no basis to recommend that the Petitioner be paid his salary from April 2025 to 26th January 2026 as it is unconstitutional, illegal and unlawful and goes against Article 232 (1) (b) of the *Constitution* which provides that the values and principles of the Public Service include efficient, effective and economic use of resources. The 4th Respondent submitted that the Conciliators' recommendation means that the Petitioner will be paid for work not done while still paying another officer an acting allowance and/or requesting the Commission to



recruit a substantive office holder who will be paid the same salary and enjoy similar benefits as those being enjoyed by the Professor.

71. The 4th Respondent submitted that it has a duty to promote constitutionalism and cannot be a party to an unlawful consent that would allow a public body to unlawfully remove an officer from office and pay them off for the remainder of their contract so that they can leave office. It relied on the Court of Appeal case, Chairman Board of Directors (National Water Conservation and Pipeline Corporation) v Meshack M. Saboke & 2 others [2019] KECA 310 (KLR) which held as follows:

“With regard to issue number 2, we adopt fully the decision of the Supreme Court of Kenya in the case of Communication Commission of Kenya & 5 others versus Royal Media Services Limited & 5 others (supra), that the only legitimate expectation of both contracting parties in an instance where the contract is prematurely brought to an end is a three months termination notice or payment of three months’ salary in lieu of notice. The finding by the trial court that 1st respondent had a legitimate expectation to receive salary compensation for the remainder of the unserved contract was erroneous in the circumstances”

72. The 4th Respondent concluded by submitting that the Petitioner has a valid contract and Kenyatta University is bound by the terms and conditions of the Contract; hence, the Petitioner should be allowed back to office and serve for the remainder of the contract until 26th January 2026.
73. I have considered the averments and submissions of the parties herein plus the reconciliator’s report submitted before this court.
74. The issues arising for this court’s determination are as follows:
1. What is the length of the petitioner’s contract with the respondent Kenyatta University Council as Vice Chancellor.
 2. What is the nature of the contract between the petitioner as professor with Kenyatta University
 3. Whether the contract between the petitioner and the Kenyatta University is governed by the CBA between the UASU and the respondent Kenyatta University (KU of 2013-2017).
 4. Whether the petitioner proceeded on his annual and sabbatical leave as per the respondent’s HR manual.
 5. What remedies to grant in the circumstances of this case.

Issue No 1

75. As submitted by all the parties herein, the petitioner Prof. Kuria was initially employed by the respondent and rose through the ranks and became a professor on 18/1/2005, on permanent and pensionable basis. As per the terms of service for academic/services library and administration staff, clause 11.2 the retirement age of a staff member shall be 75 years for teaching staff. The member shall then be required to cease duty on the next 30th June following the date that she/he retires. The petitioner averred that as a professor he is also bound by the UASU collective bargaining agreement UASU 20/3/2017 CBA between the 3rd respondent and the UASU.
76. The 3rd respondent submitted that whereas it was true that the said CBA was relevant at the time it was in force, a fresh CBA was negotiated by the UASU and the University in 2024 and the CBA of 20/3/2017 ceased to exist.



77. The 3rd respondent submitted that the CBA currently in force is one signed by the Inter Public University Councils Consultative Forum (IPUICF) the Federation of Kenya Employers (FKE) and the Universities Academic Staff Union (UASU) dated 23rd November 2024 which sets retirement age for academic staff at 74 years for Lecturers, Senior Lecturers, Assistant Professor and Professor.
78. Subsequently, the petitioner has averred that he was appointed to the position of Vice Chancellor on 26th January 2018 for a 5 year term and later from 26th January 2023 for another term which ends on 26th January 2026. The contention by the petitioner is that his term as vice chancellor ends on 26th January 2026 and therefore he should be allowed to complete his contract accordingly. That notwithstanding, the petitioner also avers that upon completion of his term as vice chancellor he should be allowed to complete his professor's term which is on 30th June 2026 following his retirement in July 2025.
79. The respondent Kenyatta University (KU) Council have submitted that the petitioner was born on 15th July 1950 as per his own documents, birth certificate 8 at page 77 to 78 of the bundle. They aver that the petitioner's retirement age is 75 years as per the University' HR policies and manual 2019. They therefore contend that he should retire on 1st July 2025.
80. Whereas it is true that the petitioner is set to attain his retirement age on 15th July 2025, it is also true that as per the terms of service for academic staff infer that the retirement will be on 30th June following the date of retirement. The retirement age of the petitioner falling on 15th July 2025 then implies that he will cease to be in office on 30th June 2026 as a Professor.
81. As concern his position as Vice Chancellor the contract is set to end on 26th January 2026. The respondents have however averred that the contract cannot be set to run beyond the retirement age which is 15th July 2025. The conciliator in his report submitted that the contract between the petitioner and the University is binding and should be left to run till January 2026.
82. Indeed having analysed as above, I find that the petitioner has two (2) contracts with that of the Vice Chancellor running to 26th January 2026 and one of professor set to terminate on 30th June 2026. This also answers issue no 2 above.

Issue No 3

83. The respondent Kenyatta University indicated that the contract between the petitioner and the University is not governed by the 2013, 2017 CBA. They averred that it is governed by an inter-consultative agreement of November 2024. The respondents however failed to submit the said consultation agreement before court in order for the court to review the same and appraise itself of its contents if at all. This court cannot therefore with certainty find that the 2013/2017 CBA does not therefore apply.

Issue No 4

84. As concerns leave, it is true that the petitioner is currently serving his leave. This is exemplified in his own letter to the University dated the January 2025. The number of days if any can only be ascertained from evidence which has not been produced before court.

Remedies

85. Having considered the above scenario and in view of the prayers sought in the application, I will render the following orders:-



1. The petitioner/applicant Prof Wainaina should be allowed to resume duty forthwith and complete his tenure as Vice Chancellor as per his contract.
2. The applicant should be allowed to revert back to his Professor's position upon termination of his Vice Chancellor's position until his retirement age.
3. The other pending issues be canvassed in the petition.
4. Costs in the petition.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30TH OF APRIL, 2025.

HELLEN WASILWA

JUDGE

