



Matete v Technical University of Kenya & another (Cause E901 of 2024) [2025] KEELRC 1612 (KLR) (30 May 2025) (Ruling)

Neutral citation: [2025] KEELRC 1612 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E901 OF 2024**

**SC RUTTO, J
MAY 30, 2025**

BETWEEN

STEPHEN MATETE CLAIMANT

AND

TECHNICAL UNIVERSITY OF KENYA 1ST RESPONDENT

**THE VICE CHANCELLOR TECHNICAL UNIVERSITY OF
KENYA 2ND RESPONDENT**

RULING

1. What is before this Court for determination is the 2nd Respondent’s Notice of Preliminary Objection dated 4th November 2024, which
 1. That the Respondent is not a juristic person and therefore lacks the locus standi to sue or to be sued as envisaged under Section 20(1) of the *Universities Act*.
 2. That the Claim and Notice of Motion Application herein offend the doctrine of exhaustion of internal remedies, notably sections/clause 12 of the Respondent’s terms of service.
 3. That as a result this Honourable court lacks the jurisdiction to hear and determine the Claim herein as it has been prematurely filed.

Submissions

2. Pursuant to the directions issued by the Court on 27th February 2025, the Preliminary Objection was canvassed by way of written submissions. It is the 2nd Respondent’s submission that it is just an office and has no capacity to sue or to be sued. In support of this position, the 2nd Respondent referenced Section 39 (2) of the *Universities Act*, which sets out the duties of the Vice Chancellor of the university.



3. Referencing Sections 15 and 20(1) of the Universities Act, the 2nd Respondent further submitted that once an interim Letter of Authority is issued to a university and later on a Charter, the institution becomes a body corporate and is capable of suing or being sued in its own name.
4. It was further submitted by the 2nd Respondent that under Section 66 of the Universities Act, the officers/members/agents of universities are protected from personal liability while executing their official mandate in good faith.
5. The 2nd Respondent further submitted that the suit was filed prematurely without exhaustion of internal resolution mechanisms and remedies. In support of this position, the 2nd Respondent referenced the case of Geoffrey Muthinja Kabiru & 2 others v Samuel Munga Henry & 1756 others (2015) eKLR.
6. The Claimant did not file written submissions in respect of the Preliminary Objection despite being granted leave of 7 days to do so on 27th March 2025.

Analysis and Determination

7. The crux of the 2nd Respondent's Preliminary Objection is that it has no capacity to sue or be sued. Notably, this position has not been disputed by the Claimant.
8. The office of the Vice Chancellor of a public university is established under Section 39 of the Universities Act. In terms of subsection (2), the Vice Chancellor is the chief executive of the university and is the academic and administrative head of the university. It is evident that despite this significant legal authority and responsibility within the university, the office of the Vice Chancellor is not established as a legal entity, hence lacks the capacity to sue or to be sued.
9. Indeed, the Claimant appeared to acknowledge this position, seeing that upon being served with the instant Preliminary Objection, he moved to amend the Statement of Claim to include the Technical University of Kenya as the 1st Respondent.
10. It is trite that a party who has no legal capacity to sue cannot be sued and any proceedings against or by such a party amount to nothing and it is null and void.
11. For the foregoing reasons, the 2nd Respondent is struck out from the suit.
12. With respect to the contention that the Claimant filed the suit prematurely and did not exhaust the internal remedies, the Court finds that the same is not a ground for striking out the suit. This is on the basis that Rule 56(5) (c) of the Employment and Labour Relations Court (Procedure) Rules 2024 is unequivocal that a suit filed prior to exhaustion of alternative dispute resolution mechanisms may be stayed and not struck out on account of such exhaustion.
13. To this end, the Preliminary Objection dated 4th November 2024, is upheld only to the extent that the 2nd Respondent is struck out from the suit herein. Costs shall be in the cause.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30TH DAY OF MAY 2025.

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant Mr. Wachakana



For the 1st Respondent No appearance

For the 2nd Respondent Mr. Mwangi Mugo instructed by Mr. Gichuru

Court assistant Millicent

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.

STELLA RUTTO

JUDGE

