



**Monanda & 7 others v Universities' Academic Staff Union (UASU) & 3 others;  
Registrar of Trade Unions & another (Interested Parties) (Employment and Labour  
Relations Petition E201 of 2024) [2025] KEELRC 1708 (KLR) (10 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1708 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS PETITION E201 OF 2024**

**HS WASILWA, J  
JUNE 10, 2025**

**BETWEEN**

**DR STEPHEN MONANDA ..... 1<sup>ST</sup> PETITIONER  
JOSEPH MUTUURA MBERIA ..... 2<sup>ND</sup> PETITIONER  
ENG NAFTALY RUGARA MUIGA ..... 3<sup>RD</sup> PETITIONER  
DR FRANKLINE KABURU KINOTI ..... 4<sup>TH</sup> PETITIONER  
PROF ABEDNEGO WAYA ..... 5<sup>TH</sup> PETITIONER  
DR MARTIN KASINA ..... 6<sup>TH</sup> PETITIONER  
DR RICHARD KASOMO ..... 7<sup>TH</sup> PETITIONER  
GEORGE MORARA ANDIMA ..... 8<sup>TH</sup> PETITIONER**

**AND**

**UNIVERSITIES' ACADEMIC STAFF UNION (UASU) ..... 1<sup>ST</sup> RESPONDENT  
GRACE C NYONGESA ..... 2<sup>ND</sup> RESPONDENT  
DR CONSTANTINE WASONGA ..... 3<sup>RD</sup> RESPONDENT  
PROF BEN M SIHANYA ..... 4<sup>TH</sup> RESPONDENT**

**AND**

**REGISTRAR OF TRADE UNIONS ..... INTERESTED PARTY  
COMMISSIONER OF LABOUR ..... INTERESTED PARTY**



## RULING

1. In opposition to the Application herein, the 2<sup>nd</sup> Respondent filed a Notice of Preliminary Objection dated 9<sup>th</sup> December 2024 on the following points of law:
  1. THAT the suit is fatally and incurably defective as it offends the provisions of Section 27(4) labour relation act and as such cannot be ventilated before this Honourable court.
  2. THAT the suit is premature as the petitioners have not exhausted the dispute resolution mechanism established under section 27(4) labour relation act.
  3. THAT the petitioners have not made any application to be exempted from such exhaustion of internal appeal mechanism.
  4. THAT the 2<sup>nd</sup> Petitioner lacks the requisite locus standi to lodge and prosecute the application herein, rendering the application incompetent, bad in law and therefore an abuse of Court process.
  5. THAT this court lacks jurisdiction to hear and determine the application.
  6. THAT the entire application and the suit would amount to an abuse of the court process and thus the entire suit is untenable and misconceived.
  7. THAT the 2<sup>nd</sup> Respondent apply that the petition be struck out with costs
2. The 2<sup>nd</sup> Respondent further filed a Notice of Preliminary Objection dated 4<sup>th</sup> February 2025 in opposition to the Petition on the following points of law:
  1. THAT the petitioners have no locus standi to present the petition under Section 27 (4) of the *labour relations act*.
  2. THAT the petition is premature and unripe for determination as the Honourable Court has no jurisdiction and capacity to hear and entertain the petition by dint of Section 27 (4) of the *labour relations act*.
  3. THAT the petition does not satisfy the doctrine of ripeness hence the Petitioner is not entitled to the order sought in the petition.
  4. THAT the petitioners have no locus standi to present the petition under Section 27 (4) of the *labour relations act*.
  5. THAT the 2<sup>nd</sup> Petitioner lacks the requisite locus standi to lodge and prosecute the petition herein rendering the petition incompetent, bad in law and therefore an abuse of the court process.
  6. THAT the entire petition would amount to an abuse of the court process and thus the entire petition is untenable and misconceived.
3. The 4<sup>th</sup> Respondent equally opposed the Application by raising Preliminary Objection dated 8<sup>th</sup> December 2024 seeking that the Application be struck off on the following grounds:
  1. The Petition is premature, pre-mediated and fails the doctrine of ripeness by pre-empting and ousting Section 27 of the *Labour Relations Act*, 2007 including the statutory role of the Registrar thereunder.



2. The Petition is misconceived, an abuse of court process and bad in law as it is based on a misinterpretation of Section 27 of the *Labour Relations Act*, 2007.
  3. The Petition is not ripe to warrant this Honourable Court's jurisdiction because the Petitioners have infringed the doctrine of exhaustion under Article 23 of the UASU Constitution, 2014.
  4. No vote or resolution has been taken on the Proposed UASU Constitution, 2024 as required under Article 23 of the UASU Act, 2014.
  5. The 2<sup>nd</sup> Petitioner has no locus standi to institute the instant Petition.
4. The 3<sup>rd</sup> Respondent also filed a Notice to Raise Preliminary Objection dated 9<sup>th</sup> December 2024 seeking that the instant petition be struck out on the following grounds:
1. The instant petition and notice of motion application both offend the provisions of Section 27 of the *Labour Relations Act* and invokes the jurisdiction of this court prematurely.
  2. The instant petition and notice of motion application both offend the provisions of Article 23 of *the Constitution*; Rules and Regulations of the Universities' Academic Staff Union (UASU), the 1<sup>st</sup> Respondent herein, and invokes the jurisdiction of this court prematurely.
  3. The instant petition is incompetent, bad in law, untenable, unmaintainable and improperly before this court.

#### **1<sup>st</sup> Respondent's Submissions.**

5. The 1<sup>st</sup> Respondent submitted that the principle of exhaustion of remedies is a cardinal one in Kenyan jurisprudence as set out under Section 27 of the *Labour Relations Act*. The failure to first seek redress from the Registrar of Trade Unions before resorting to court is a fatal defect in the Petitioner's application.
6. It is the 1<sup>st</sup> Respondent's submission that the Registrar of Trade Unions is statutorily mandated to resolve disputes related to union constitutions under the *Labour Relations Act* and by passing this procedure, the Petitioner failed to follow the mandatory statutory process rendering their application premature and as such liable for dismissal. they
7. It is the 1<sup>st</sup> Respondent's submission that the principle of public participation is enshrined in Article 10 of *the Constitution* which mandates that public bodies including trade unions must engage in participatory decision-making processes. In the instant case, the 1<sup>st</sup> Respondent ensured all its members were informed of the proposed amendments through various means of communication including email circulars, online meetings and electronic submissions. This approach meets the constitutional threshold for public participation
8. The 1<sup>st</sup> Respondent submitted that the Petitioners are prematurely seeking to halt the amendment process which is ongoing and has not been completed. The reliefs sought include halting an ongoing process, are disproportionate and unwarranted. Therefore, the application is an attempt to improperly use the court to prevent lawful union activities thus constituting an abuse of the court process.

#### **2<sup>nd</sup> Respondent's Submissions.**

9. The 2<sup>nd</sup> Respondent submitted that the underlying dispute is centred on the interpretation of Section 27(4) of the *Labour Relations Act* and whether the decision has been made by the 1<sup>st</sup> Interested Party



to be challenged by the Petitioners. This court should refrain from exercising jurisdiction in order to allow the 1<sup>st</sup> Interested Party to exercise its mandate.

10. The 2<sup>nd</sup> Respondent submitted that the petitioners approached this court immediately after the 1<sup>st</sup> Respondent called for the 32<sup>nd</sup> National Delegates Conference whereas at this point the reviewed constitution 2014 had not been ratified and the 1<sup>st</sup> Interested Party has not decided over it; making it unripe for determination of this court. Therefore, there exists no justiciable controversy appropriate or ripe for judicial determination.
11. It is the 2<sup>nd</sup> Respondent's submissions that the petition should await the outcome of the 1<sup>st</sup> Interested Party before invoking this court's jurisdiction. The Petitioners should be prevented from approaching this court prematurely when they are yet to be prejudiced or there is a real threat of prejudice as a result of an alleged unlawful conduct.
12. The 2<sup>nd</sup> Respondent submitted that the doctrine of ripeness prevents a party from approaching a court prematurely; ripeness refers to the readiness of a case for litigation. A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated or may not occur at all. If a dispute is insufficiently developed, any potential injury is speculative to warrant judicial action.
13. The 2<sup>nd</sup> Respondent submitted that it has incurred costs in hiring a firm of advocates to represent them in this matter, thus, it is just and fair that they be awarded costs so that they can recoup the expenses incurred in defending themselves in this matter.

### 3<sup>rd</sup> Respondent's Submissions

14. The 3<sup>rd</sup> Respondent submitted that it is trite law as set out in *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] KECA 48 (KLR) 'Jurisdiction is everything. Without it the court has no power to make one step.'
15. The 3<sup>rd</sup> Respondent submitted that the establishment of jurisdiction should be guided by the doctrine of ripeness. The 1<sup>st</sup> Respondent being a union established sufficient safeguards for valid determination of any dispute in the performance of its functions. The invocation of Section 27 of the [Labour Relations Act](#) is premature seeing that not all redress avenues were exhausted.
16. The 3<sup>rd</sup> Respondent submitted that the principle of constitutional avoidance holds where it is possible to decide a case without reaching a constitutional issue, it should be done. When the petition was filed, the Respondents were denied the opportunity to sufficiently exercise their mandates within the law especially regarding redress of the Petitioners' concerns. By instituting a petition on a matter that is undetermined by the 1<sup>st</sup> Respondent and invoking [the Constitution](#) and Section 27 of the [Labour Relations Act](#), the Petitioners are abusing the court's time and process.
17. It is the 3<sup>rd</sup> Respondent's case that Section 27 of the [Labour Relations Act](#) should be invoked after the National Delegates Conference and not before. Therefore, the Petitioners should not be prevented from approaching the court prematurely as the arguments in support of the petition do not present a real or imminent breach of their rights or violations of [the constitution](#).

### 4<sup>th</sup> Respondent's Submissions

18. The 4<sup>th</sup> Respondent submitted that this court lacks jurisdiction to hear and determine this matter by dint of Section 27(4) of the [Labour Relations Act](#) on grounds of the doctrine of constitutional avoidance; the petition is premature and unripe; and the Petitioners have not exhausted the locally available remedies.



19. On the doctrine of constitutional avoidance, the 4<sup>th</sup> Respondent submitted that the Petitioners still have recourse under Section 27(4) of the [Labour Relations Act](#) to submit any objections against the registration of the proposed UASU Constitution 2024. He relied on the Supreme Court case of *Communications Commission of Kenya v Royal Media Services Limited & 5 Others* [2014] eKLR where it was held that ‘a court will not determine a constitutional issue, when a matter may be properly be decided on another basis.’
20. The 4<sup>th</sup> Respondent submitted that the issues raised by the Petitioners are disputes capable of being resolved by the Registrar of Trade Unions under the [Labour Relations Act](#) in the first instance before approaching this Honourable Court. He highlighted the short title of the Act recognises that the purpose of its enactment was the promotion of orderly and expeditious dispute settlement.
21. It is the 4<sup>th</sup> Respondent’s submission that the substance of the petition is the amendment and subsequent adoption of the proposed UASU Constitution, 2024. Section 27(4) of the [Labour Relations Act](#) is the operative law on objection to the registration of any change or amendment of the union’s constitution or name; and it grants the Registrar of Trade Unions the statutory mandate upon receiving any objection against the registration of any amendment and to make any of the following orders: refer the matter to the Employment and Labour Relations Court; refuse to accept the proposed amendments; or make any orders that he may deem fit in the circumstances.
22. On the alleged lack of public participation and inclusion, the 4<sup>th</sup> Respondent submitted that the Petitioners cannot raise constitutional violations to circumvent the clear, unambiguous and available legal recourse under Section 27(4) of the [Labour Relations Act](#). This would be an abuse of the court’s time and limited resources.
23. It is the 4<sup>th</sup> Respondent’s submissions that the jurisdiction of this court can only be properly invoked after the Registrar of Trade Unions has downed their tools and not before or at a time when the subject matter of the petition is still pending before the Registrar of Trade Unions for final determination.
24. On the doctrine of exhaustion, the 4<sup>th</sup> Respondent submitted that the Petitioners have already filed objections to the registration of the proposed UASU Constitution 2024 before the 1<sup>st</sup> Interested Party. This raises two legal issues: firstly, the continued hearing of this matter by this court and the Registrar of Trade Unions simultaneously results in sub judice as the facts, issues and prayers sought are similar; secondly, should this court proceed and hear and determine the suit on merits at the first instance, will it still hear and determine the appeal from the decision of the Registrar of Trade Unions in the event either the Petitioners or Respondents appeal?
25. It is the 4<sup>th</sup> Respondent’s submissions that as far as the issue in question related to a dispute arising from the amendment or change and subsequent registration of the UASU 2024 Constitution, the legally provided process under Section 27(4) of the [Labour Relations Act](#) is first filing an objection with the Registrar of Trade Unions and subsequent appeal to the Employment and Labour Relations Court, if the aggrieved party desires.
26. On whether the petition is premature and unripe, the 4<sup>th</sup> Respondent submitted that this court should restrain itself from hearing and determining the instant petition since there is an existing and more appropriate forum under Section 27(4) of the [Labour Relations Act](#) that can hear and determine the substratum of the petition effectively.
27. The 4<sup>th</sup> Respondent submitted that the petition amounts to an abuse of the court process as the Petitioners raised issues which were and still are capable of being canvassed, heard and determined fully by another appropriate forum.



28. On costs, it is the 4<sup>th</sup> Respondent's submission that the Respondents have expended union resources and incurred costs to defend the petition at the expense and detriment of UASU members; therefore, it would be just and fair that the court awards costs to the Respondents.

### **Petitioners' Submissions**

29. The Petitioners submitted on two issues: whether the Petitioners have locus standi to institute the instant Petition; and whether the Petition is ripe for determination.
30. On the first issue, the Petitioners submitted that Article 22(1) of *the Constitution* empowers every person to institute court proceedings in the event that their right or fundamental freedom in the Bill of Rights has been denied, violated or infringed or is threatened.
31. The Petitioners submitted that they are lecturers at various public universities in Kenya and are members of the 1<sup>st</sup> Respondent. As per the provisions of Section 4(2) of the *Labour Relations Act*, they have a right to participate in the lawful activities of the 1<sup>st</sup> Respondent including the amendment of its Constitution. However, sometime in 2024, the Respondents sought to amend the 1<sup>st</sup> Respondent's Constitution culminating in the drafting of the controversial Proposed UASU Constitution, 2024 without taking into consideration the views of the Petitioners as they were completely excluded from participating in the amendment process.
32. It is the Petitioners' submissions that their exclusion from participating in the amendment process violated their right to participate in the 1<sup>st</sup> Respondent's electoral activities contrary to the Constitutional provisions. Consequently, they have rightfully approached this seeking redress of the same and therefore have standing to do the same.
33. On the second issue, the Petitioners submitted that their constitutional right to public participation and inclusion was violated. They expressed to the 3<sup>rd</sup> Respondent their displeasure vide a Petition seeking for their views to be taken into consideration, However, the 3<sup>rd</sup> Respondent completely ignored and/or disregarded their concerns prompting the filing of this Petition.
34. The Petitioners further submitted that the 1<sup>st</sup> Respondent has since instituted judicial review proceedings seeking to compel the 1<sup>st</sup> Interested Party herein to register the UASU Constitution 2024, despite the Registrar's finding that the said Constitution was not voted for procedurally. This underscores the existence of contested factual issues that require this court's determination.
35. It is the Petitioners' submission that in determining whether or not this petition is ripe and properly before it, the court must evaluate the evidence presented by the parties and the factual circumstances arising. The court will therefore be tasked to undertake a fact-finding mission, thereby rendering the Preliminary Objections raised by the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents unsustainable.
36. They relied in the case of *Mukisa Biscuit Manufacturing Co. Ltd -vs- West End Distributors Ltd (1969) EA 696* where the court defined a preliminary objection as:

“A Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration... a Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts



pleaded by the other side are correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion.”

37. The Petitioner submitted that they have properly invoked the jurisdiction of this court, having established that their constitutional rights, particularly the right to public participation and inclusion, have been violated.
38. I have examined the averments and submissions of the parties herein. The respondents have filed preliminary objections challenging the jurisdiction of this court to entertain the petition. They aver that the petition offends the provisions of section 27(4) of the *Labour Relations Act* and the doctrine of ripeness. Section 27(4) of the *Labour Relations Act* provides as follows:
- (4) Upon receipt of the notice of change of name or constitution, the Registrar shall give a notice of at least twenty-one days in the Gazette and in three daily newspapers of national circulation inviting any objections to the proposed change of name or constitution by members of the trade union and where any such objection is raised, the Registrar shall investigate the complaint and the grounds relied upon and may-
- (a) refer the matter to the Industrial Court;
- (b) refuse to accept the proposed amendments; or
- (c) make any orders that he may deem fit in the circumstances.
39. The law is clear as to what happens upon the registrar receiving a notice of change of a union constitution as above. The 1<sup>st</sup> step is for the Registrar to issue a 21 days’ notice in the gazette and in three daily newspapers inviting objections to the proposed changes. The Registrar is obligated to investigate any complaints and grounds relied upon and may then refer the matter to this court, refuse to accept the changes or make any orders that he may deem fit in the circumstances.
40. In the current case, the applicant respondents have averred that they subjected their union constitution to an amendment exercise and the delegates are said to have met over the issue on 10<sup>th</sup> and 11<sup>th</sup> December 2024. The petitioners had approached this court however before the RTU followed the process as envisaged under section 27(4) of the *Labour Relations Act*. As submitted by the applicant respondents, the applicant respondents reverted to court prematurely without allowing the process of the law to take root and so in conflict with the principle of ripeness as submitted herein.
41. I do find that the preliminary objections raised have merit and the petition cannot stand in the circumstances and must fail. The petition is struck out with no order of costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 10<sup>TH</sup> OF JUNE, 2025.**

**HELLEN WASILWA**

**JUDGE**

