



**Kenya Universities Staff Union v Egerton University & another (Petition
88 of 2020) [2024] KEELRC 80 (KLR) (31 January 2024) (Judgment)**

Neutral citation: [2024] KEELRC 80 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION 88 OF 2020**

J RIKA, J

JANUARY 31, 2024

IN THE MATTER OF: ARTICLES 10,27,36,41,47,232 AND 258 OF THE CONSTITUTION;

AND,

IN THE MATTER OF: SECTION 10[5] OF THE EMPLOYMENT ACT;

AND,

**IN THE MATTER OF: UNFAIR LABOUR PRACTICES
& UNFAIR ADMINISTRATIVE ACTION;**

BETWEEN

KENYA UNIVERSITIES STAFF UNION PETITIONER

AND

EGERTON UNIVERSITY 1ST RESPONDENT

KISII UNIVERSITY 2ND RESPONDENT

JUDGMENT

1. The Petition herein was filed on June 12, 2020.
2. It is founded on the Affidavit of the Petitioner's Secretary – General Charles Mukhwya, sworn on June 10, 2020.
3. The Petitioner is a duly registered Trade Union, mandated to represent unionisable staff in public universities' administrative, technical, library and information units.
4. The Respondents are public universities, employing members of the Petitioner.
5. The Petitioner executed a Collective Bargaining Agreement [CBA], with public universities, through the Respondents' Federation.



6. The Respondents are members of the Employers Federation of Public Universities, known as Inter Public Universities Councils Consultative Forum [IPUCCF].
7. IPUCCF has a Recognition Agreement and CBA with the Petitioner.
8. The grievance that triggered this Petition, is that on May 11, 2020 and May 13, 2020, the Respondents issued circular/notice to the Petitioner's members, unilaterally reducing their monthly salaries, effective April 2020.
9. The Respondents did not involve the Petitioner, in reduction of its members' monthly salaries.
10. There was up to 40% salary reduction, while pay slips issued to the Petitioner's members, continued to mislead that members were receiving 100% of their monthly salaries.
11. Against this background, the Petitioner submits that the Respondents violated its members' constitutional guarantees and protections, under the Articles detailed in the title to the Petition above.
12. The Petitioner submits that the Government of Kenya continued to fund public universities. In the supplementary budget of 2020, public universities were allocated additional funds for staff remuneration. There was no reason to justify reduction of members' salaries.
13. Other public universities continued to pay their staff full salaries. The Respondents were 2 among 31 public universities.
14. The Petitioner submits that the Respondents have violated: Article 10 of the Constitution by disregarding people participation, inclusiveness, good governance and transparency; Article 41 on the right to engage in collective bargaining; Article 47 on fair administrative action; Article 232 on public service principles; and Section 10 [5] of the Employment Act, requiring Employers to consult their Employees on variation of employment contracts.
15. The Petitioner prays for: -
 - a. Declaration that the circular and internal memo dated May 11, 2020 and May 13, 2020, issued by the Respondents are unconstitutional, null and void.
 - b. Declaration that the Respondents have infringed the Petitioner's constitutional rights under Articles 10,41,47, and 232 of the Constitution.
 - c. Permanent injunction restraining the Respondents by themselves and/or their agents, from implementing the circular and internal memo.
 - d. Any other suitable order.
 - e. Costs.
 - f. Interest.
16. The 1st Respondent relies on the Affidavit of its Finance Officer, Moses Odera Ouma sworn on June 25, 2020.
17. Ouma states that the Petitioner was invited for a consultative meeting by the 1st Respondent, before the circular issued on May 13, 2020. There was a second meeting between the Parties, on June 11, 2020, when the Petitioner was informed of the 1st Respondent's financial position.



18. The Petitioner was advised that with the onset of Covid-19, the Government directed closure of the 1st Respondent alongside other public institutions. This led to non-collection of university fees, necessitating pay cut.
19. Odero further states that prior to Covid-19, the 1st Respondent suffered inadequate revenue collection owing to industrial action called by the Petitioner at the university, in 2018. There was reduced student enrolment, leading to loss of Kshs. 1.035 million. Government funding declined sharply.
20. In 2018-2019 funding was reduced from Kshs. 205 million to Kshs. 153 million. In 2019, the year closed on an operating deficit of Kshs. 1.705 billion. The 1st Respondent was compelled to default on payment of some statutory obligations. The University Sacco filed a Claim in Nakuru, HCC Number 38 of 2019, demanding Kshs. 434 million from the 1st Respondent, in unremitted obligations.
21. The 1st Respondent's Council was compelled to approve a Kenya Commercial Bank overdraft facility, at Kshs. 100 million, to sustain its operations.
22. Its bank accounts were frozen by Kenya Revenue Authority on September 13, 2019, due to outstanding tax liability.
23. Odero states that the 1st Respondent was taken to Court by another trade union, University Academic Staff Union [UASU], concerning the same subject matter, in Nairobi E&LRC Petition No. 80 of 2020, where an order for stay of implementation of the circular of May 13, 2020 issued.
24. The 2nd Respondent filed a Replying Affidavit sworn by its Legal Officer Seth Ayunga Onguti on October 18, 2021. He explains that the Petitioner's members were paid their salaries in full as per staff memo dated September 30, 2020. The 2nd Respondent's position is that there is no substratum to the Petition. Onguti states that the 2nd Respondent was faced with liquidity problems similar to those narrated by the 1st Respondent, leading to the decision to reduce staff salaries. There was: low capitation from the exchequer; insufficient revenues; forced closure of the 2nd Respondent owing to outbreak of Covid-19; lack of alternative revenue streams; and the need to fund other critical recurrent liabilities such as utilities. The decision to reduce salaries by 40%, was made against this background and was made in good faith. It was a temporary measure. The 2nd Respondent had committed to offset the arrears, upon resumption of normalcy.
25. The Court made a Ruling dated February 25, 2022, arising from an Application filed by the Petitioner dated June 10, 2020. The orders made were: -
 - a. Pending hearing and determination of the Petition, the Respondents are restrained, by themselves, agents and/ or other persons acting on their behalf, from implementing the circular and internal memo dated May 13, 2020 and May 11, 2020 respectively.
 - b. Pending hearing and determination of the Petition, the Respondents are similarly restrained from changing any terms and conditions of service of the Petitioner's members, without consultation/ inclusion of the Petitioner.
26. The Petitioner subsequently filed a Notice of Withdrawal of the Petition against the 2nd Respondent. This was confirmed by the Petitioner's Counsel, before the Court on March 10, 2023. The Court recorded the order for withdrawal, with further orders made, that the remainder of the Petition between the Petitioner and the 1st Respondent, is considered and determined through Written Submissions.



27. The Petitioner and the 1st Respondent confirmed filing and exchange of their Submission at the last mention before the Court on October 11, 2023.
28. The issues are whether the Notice to All Staff Members, dated May 13, 2020, issued by the 1st Respondent, resulted in constitutional, statutory and contractual violations, as claimed by the Petitioner; and whether the prayers sought are merited.

The Court Finds: -

29. The Notice dated May 13, 2020, issued by the 1st Respondent's Vice-Chancellor Rose A. Mwonya, reads: -
 - “Due to Covid-19 pandemic that has affected the whole country, the University is not able to generate enough funds internally, to be able to pay salaries for the month of April 2020. This might continue for a while during the pandemic period. The University Management Board resolved that the available funds be paid as follows:
 - I. Staff Grade 1-4 will receive their full 100% net salaries as indicated in their pay slips.
 - II. Staff Grade 5-19 will receive 60% of their salaries as indicated in their respective pay slips.
 - III. The balance of 40% will be paid as soon as possible.
30. The glaring defect in this Notice, as pointed out in the Ruling of the Court dated February 25, 2022, is in its disregard of the existing collective bargaining structures, in place between the Parties. The University Management Board just resolved unilaterally.
31. The 1st Respondent is a member of the umbrella Employer Federation, Inter Public Universities Councils Consultative Forum [IPUCCF].
32. IPUCCF has a Recognition Agreement, and Collective Bargaining Agreement with the Petitioner.
33. The issue at hand, reduction of staff salaries, is a matter that fell within the range of collective bargaining subjects.
34. Confronted with the long list of challenges highlighted in the Affidavit of Finance Officer Moses Odera Ouma, the 1st Respondent was not to resolve those challenges, through a unilateral decision made by its Management Board. It had an obligation in law, to act through the existing collective bargaining structures.
35. The salaries of the Petitioners' members could not be interfered with, without consulting the Petitioner, in accordance with the existing collective bargaining structures. Where there exists a collective mechanism for variation of terms and conditions of service, of unionisable staff, that mechanism must be followed at all times.
36. The 1st Respondent is a public institution, funded by the Government, as submitted by its Finance Officer.
37. The Government, and its social partners, represented by Trade Union Centre [COTU] and the Federation of Kenya Employers, generated a Tripartite Memorandum of Understanding [MOU] on April 20, 2020, committing to meet the challenge of Covid-19, through social dialogue.



38. The social dialogue alluded to by the 1st Respondent's Finance Officer, in his Replying Affidavit, as recorded in the minutes of a meeting held on May 4, 2020, was not social dialogue as contemplated in the Tripartite MOU dated April 20, 2020, and did not fall within the collective bargaining structures in place between the Petitioner and the 1st Respondent.
39. The meeting involved the 1st Respondent's officers led by the Vice-Chancellor, and various trade union chapter representatives, including the Petitioner's Chapter Chair, Fredrick Isaboke.
40. The Court noted in its Ruling made on February 25, 2022, that in any event, the Chapter Representatives did not engage in negotiation over the proposed salary cuts. They correctly told the 1st Respondent's Vice-Chancellor and her team, that the proposal was beyond their mandate.
41. The right collective bargaining platform would have been at the IPUCCF. Consultations and negotiations, relating to a collective bargaining subject – reduction of members' salaries- could not be held and resolutions made, outside the existing collective bargaining structures. By acting unilaterally, the 1st Respondent subjected its unionisable members to terms and conditions of service which were not in application, to other, approximately 30 Universities, represented under IPUCCF. Such different treatment, could rock industrial peace and harmony, within the public universities.
42. The Court is therefore persuaded, that the 1st Respondent acted in violation of the Petitioner's right to collective bargaining under Article 41 of the Constitution. The Notice dated May 13, 2020 issued by the 1st Respondent's Vice-Chancellor, went against the existing collective bargaining structures.

It is Ordered: -

- a. The Petition against the 2nd Respondent shall be marked as withdrawn, with no order on the costs.
- b. The Petition against the 1st Respondent is allowed as follows: -
 - I. The Notice issued by the 1st Respondent to Staff, dated May 13, 2020 on salary reduction, is declared unconstitutional, null and void.
 - II. A permanent injunction is granted restraining the 1st Respondent by itself, Agents or Whomsoever acting on behalf of the 1st Respondent, from implementing the said Notice, without involvement of the Petitioner, within the existing collective bargaining structures.
 - III. Costs to the Petitioner payable by the 1st Respondent.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 31ST DAY OF JANUARY 2024.

JAMES RIKA

JUDGE

Court Assistant: Emmanuel Kiprono

Onyony & Company Advocates for the Petitioner

Sheth & Wathigo Advocates for the 1st Respondent



Nyamurongi & Company Advocates for the 2nd Respondent

