



**Njenga v Registrar, Administration, Planning and Development Kenya Methodist University
& 2 others (Cause E748 of 2023) [2024] KEELRC 401 (KLR) (28 February 2024) (Ruling)**

Neutral citation: [2024] KEELRC 401 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E748 OF 2023
L NDOLO, J
FEBRUARY 28, 2024**

BETWEEN

DR ADRIAN KAMOTHO NJENGA CLAIMANT

AND

**THE REGISTRAR, ADMINISTRATION, PLANNING AND DEVELOPMENT
KENYA METHODIST UNIVERSITY 1ST RESPONDENT**

VICE CHANCELLOR, KENYA METHODIST UNIVERSITY 2ND RESPONDENT

KENYA METHODIST UNIVERSITY 3RD RESPONDENT

RULING

1. The Claimant filed both a Memorandum of Claim and Notice of Motion dated 13th September 2023, alleging unfair labour practices by the Respondents. The Claimant filed a subsequent Notice of Motion dated 27th September 2023 on similar issues.
2. In response, the Respondent filed a notice of Preliminary Objection dated 27th September 2023, challenging the jurisdiction of the Court to entertain the claim and the twin applications in view of the doctrine of exhaustion of internal dispute resolution mechanisms.
3. The Respondents state that the claim offends the requirements of Article 159(2) of the *Constitution* and Section 9(2) and (4) of the *Fair Administrative Action Act*.
4. Subsequent to this, the Claimant filed a notice of withdrawal of the claim and the two applications pending in court.
5. While Counsel for the Respondents was not opposed to the withdrawal, she asked for costs and because the parties were unable to agree on this issue, I directed them to address the Court by way of written submissions.



6. In general terms, costs in civil litigation are payable to the successful party and where a party withdraws from the proceedings midstream, the opposite party may ask for costs. Nevertheless, the issue of costs is a matter of discretion to be exercised within the context of the peculiar circumstances of each case.
7. With particular reference to employment matters, Section 12(4) of the [Employment and Labour Relations Court Act](#) provides as follows:
 - (4) In proceedings under this Act, the Court may, subject to the rules, make such orders as to costs as the Court considers just.
8. In this case, it may be argued that the Claimant was jolted by the Respondents' Preliminary Objection to withdraw his claim, which he ought not to have filed at the time he did. This however is not enough reason to cause the Court to shackle him with the burden of costs.
9. There was no manifestation of any mala fides on the part of the Claimant. Further, he took steps to withdraw the claim at the nascent stages of the case. For this reason, I will exercise discretion in favour of the Claimant and direct that each party will bear their own costs.
10. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 28TH DAY OF FEBRUARY 2024

LINNET NDOLO

JUDGE

Appearance:

Ms. Amutabi h/b for Mr. Okatch for the Claimant

Ms. Inyanje for the Respondents

