



**Kenya Universities Staff Union v Kisii University (Petition
E007 of 2023) [2023] KEELRC 721 (KLR) (22 March 2023) (Ruling)**

Neutral citation: [2023] KEELRC 721 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
PETITION E007 OF 2023
S RADIDO, J
MARCH 22, 2023
IN THE MATTER OF CONTRAVENTION AND VIOLATION OF KISII
UNIVERSITY CAREER GUIDELINES (SCHEMES OF SERVICE, 2014)**

BETWEEN

KENYA UNIVERSITIES STAFF UNION PETITIONER

AND

KISII UNIVERSITY RESPONDENT

RULING

Ruling/Further Directions

1. The Kenya Universities Staff Union (the Union) lodged a Petition with the Court against Kisii University (the University) on 9 March 2023, alleging that the recruitment process commenced by the University for the positions of Registrar (Administration & Central Services), Registrar (Academic Affairs), Registrar (Research, Extension, Innovation & Resource Mobilisation), Chief Planning Officer and Human Resource Manager violated the Kisii University Career Progression Guidelines (Scheme of Service), 2014, section 29 of the *Human Resource Management Professionals Act*, section 34 of the Public Service Act, section 10 of the *Public Service (Values and Principles) Act*, 2015, the Statute XI of the Kisii University Statutes, 2020 as well as several provisions of the Constitution.
2. Filed together with the Petition was a Motion under a certificate of urgency. The Motion sought both *ex-parte* and inter-partes interim orders interdicting the recruitment process.
3. When the Motion was placed before the court on 9 March 2023, it directed the Union to serve the University ahead of further proceedings on 13 March 2023.
4. When the parties appeared in court on 13 March 2023, the Court allowed the Union to urge its request for *ex-parte* orders, albeit with the University given the liberty to make submissions from the bar as it had not filed a factual response to the Motion.



5. The court took the arguments but declined to grant any ex-parte order at that stage.
6. The court directed the University to file and serve a replying affidavit in response to the Motion ahead of taking oral submissions on the propriety of granting an interim order inter-partes on 21 March 2023.
7. The University did not file its response to the Motion within the agreed timelines, and when the parties appeared for oral submissions on 21 March 2023, the Union requested to be allowed more time to file a further affidavit to rebut the assertions in the University's replying affidavit.
8. The Union also renewed the request for the issuance of interim orders stopping the recruitment process.
9. The court heard brief addresses from the parties and reserved Ruling/Directions to today.
10. The failure by the University to file its responses to the Motion within the agreed timelines while not blameworthy, mean that the court is unable to determine the Motion with expedition as it had desired considering its caseload and diary at the moment, and the upcoming recess which starts next week.
11. The court has also given consideration to the fact that the positions advertised have had persons acting for various periods of time.
12. The court therefore directs that:
 - (i) The aspects of the Motion remaining undetermined to be taken together with the Petition.
 - (ii) The Union to file and serve a further affidavit and submissions on or before 5 April 2023.
 - (iii) The University to file and serve submissions on or before 13 April 2023.
13. Pending judgment, the court issues an order staying the recruitment process for the positions of Registrar (Administration & Central Services), Registrar (Academic Affairs), Registrar (Research, Extension, Innovation & Resource Mobilisation), Chief Planning Officer and Human Resource Manager signalled through the vacancy advertisement of 17 February 2023.
14. The court will schedule a judgment date hereinafter.

ISSUED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 22ND DAY OF MARCH 2023.

Radido Stephen, MCI Arb

Judge

Appearances

For Petitioner Onyony & Co. Advocates

For Respondent Nyamurongi & Co. Advocates

Court Assistant Chrispo Aura

