



**University Academic Staff Union (Maseno Chapter) v Maseno University
(Petition E015 of 2021) [2023] KEELRC 641 (KLR) (8 March 2023) (Ruling)**

Neutral citation: [2023] KEELRC 641 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
PETITION E015 OF 2021**

S RADIDO, J

MARCH 8, 2023

**IN THE MATTER OF ARTICLES 1, 2, 3, 10, 19, 20, 21, 22, 23, 24, 25, 27, 28, 41, 48, 50, 52,
159, 160, 161, 162, 165, 258, 259 AND 260 OF THE CONSTITUTION OF KENYA, 2010**

AND

SECTION 7(1) OF SCHEDULE 6 OF THE CONSTITUTION OF KENYA

AND

**IN THE MATTER OF VIOLATION AND THREATENED VIOLATION OF
ARTICLES 1, 2, 6(3), 10, 19, 20, 21, 23, 24, 25, 27, 28, 40, 41, 43, 48, 49, 50(1), 159,
160, 161, 162, 165, 258, 259 AND 260 OF THE CONSTITUTION OF KENYA, 2010**

AND

IN THE MATTER OF SECTIONS 3, 4 AND 15 OF THE MASENO UNIVERSITY ACT

AND

IN THE MATTER OF SECTION 5 OF THE UNIVERSITIES ACT, 2012

AND

**IN THE MATTER OF SECTION 8(1) OF THE COMMISSION
FOR UNIVERSITY EDUCATION GUIDELINES**

AND

**IN THE MATTER OF SECTIONS 4 AND 5 OF THE
FAIR ADMINISTRATIVE ACTION ACT NO. 4 OF 2015**

AND

**IN THE MATTER OF A DETERMINATION ON THE TEACHING
LOAD/WORKLOAD AND WORKING HOURS FOR THE
TEACHING STAFF/LECTURERS OF THE MASENO UNIVERSITY**

BETWEEN



UNIVERSITY ACADEMIC STAFF UNION (MASENO CHAPTER) PETITIONER

AND

MASENO UNIVERSITY RESPONDENT

RULING

1. In a judgment delivered on November 23, 2022, the Court issued the following orders:
 - i. A declaration is hereby issued that the Respondent's decision to increase the teaching/workload from the recommended 3-course units per semester to 5-course units per semester was invalid for failure to consult the Union.
 - ii. An order is hereby issued directing the Respondent to consult with the Union to resolve the issue of teaching/workload and incorporate such agreement in the next collective bargaining agreement.
2. The University was aggrieved and on January 11, 2023, it filed a Motion seeking orders:
 - (1) ...
 - (2) ...
 - (3) ...
 - (4) That there be a stay of execution of the judgment delivered on 23rd November 2022 pending the hearing and determination of an intended appeal herein in ELRC Petition No E015 of 2021 and all consequential orders thereto.
 - (5) That pending the hearing and determination of intended appeal, the Petitioners either by themselves, their agents and/or members be restrained by a temporary injunction from stopping, failing, neglecting and/or interfering with teaching of the allocated courses and in the alternative an order of status quo be granted pending the hearing and determination of the intended appeal.
 - (6) That the costs of this application be in the cause.
3. The Union filed Grounds of Opposition to the Motion on 13 January 2023, and the Court took arguments on January 17, 2023.
4. At the same time, the Court reserved Ruling to enable the parties attempt out of court settlement, but no agreement was reached.
5. The Court has considered the Motion, supporting affidavit, Grounds of Opposition and the oral submissions.
6. The Court granted two substantive orders in the judgment sought to be appealed against.
7. The first order was a declaration. The declaration did not direct any party to do or refrain from doing or taking any action and therefore granting a stay would not be legally necessary.
8. The second order the Court made was to direct the parties to initiate consultations with a view to incorporating an agreement on teaching workload in the next collective bargaining agreement.



9. The question of teaching workload goes to the heart of the terms and conditions of service and since the parties have a recognition agreement, it would be self-defeating for the Court to stop the parties, being social partners, even temporarily from engaging in social dialogue. Social dialogue is one of the hallmarks of industrial relations.
10. Lastly, the University has sought an injunctive or restraining order against the Union. This Court already rendered itself on the dispute which was presented to it in the judgment and therefore it is functus officio.
11. If the University apprehends a fresh industrial action from the Union based on facts arising after the judgment, the dispute should be progressed through the avenues and channels outlined in the parties' recognition agreement and Part VIII of the *Labour Relations Act*.

Conclusion and orders

12. For the above reasons, the Court finds no merit in the Motion and it is dismissed with costs to the Union.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 8TH DAY OF MARCH 2023.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Petitioner Onsongo & Co. Advocates

For Respondent Joy Akinyi, Legal Department, Maseno University

Court Assistant Chrispo Aura

