



**Alwala & 3 others v Kenya Universities Staff Union (Constitutional Petition E083 of 2023) [2023] KEELRC 1559 (KLR) (22 June 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1559 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CONSTITUTIONAL PETITION E083 OF 2023**

**B ONGAYA, J**

**JUNE 22, 2023**

**IN THE MATTER OF ARTICLES 27, 41(1), (5), 159 (1) & (2), 162  
(2), 165, 230 (4) & (5) AND 237 OF THE CONSTITUTION OF  
KENYA 2010**

**IN THE MATTER OF THE LABOUR RELATIONS ACT, 2007**

**BETWEEN**

**JOSECK OLUKUSI ALWALA ..... 1<sup>ST</sup> PETITIONER  
HANNIEL KIPCHIRCHIR ..... 2<sup>ND</sup> PETITIONER  
JOHN WEKESA WANYAMA ..... 3<sup>RD</sup> PETITIONER  
FRANCIS CHENGOLI ..... 4<sup>TH</sup> PETITIONER**

**AND**

**KENYA UNIVERSITIES STAFF UNION ..... RESPONDENT**

**RULING**

1. The petitioners are members of the respondent trade union. They filed the petition on May 4, 2023 together with an application by the notice of motion dated May 2, 2023 and through Weda & Company Advocates. In the application they seek to obtain an interim conservatory order suspending the process of amendment of the respondent's constitution as initiated by the letters of the Secretary General of the Union on March 9, 2023 and April 1, 2023 pending the hearing of the petition. It is their case in the main petition that the elections of the union be held per the trade union's constitution registered on April 3, 2013 and that the officials of the union are in office illegally.



2. The respondent filed a notice of preliminary objection dated May 9, 2023 through Bruce Odeny & Company Advocates. The respondent raises a preliminary objection that the suit is *res judicata* and should be struck out. The grounds are stated as follows:
  - a) The petition is an exact duplicate of the Petition in Nairobi ELRC No E 026 of 2021 [Francis Chengoli & Another v Kenya University Staff Union](#) which was heard and determined on March 18, 2022 as referred to by the petitioners in their petition.
  - b) The facts and issues in the current petition were directly and substantially in issue in the former petition between the same parties or between parties under whom they or any of them claim, litigating under the same title in a court of competent jurisdiction,
  - c) Under the principles of *res judicata* parties are barred from litigating the same dispute again, once a final judgment has been rendered by a competent Court.
3. The Court prioritised the hearing and determination of the preliminary objection and parties filed their respective submissions. The Court has considered all relevant material on record and returns as follows.
4. The parties are in agreement that the doctrine of *res judicata* ensures that litigation comes to an end so that once a court of competent jurisdiction has decided the case on merits, the parties or those claiming in the parties' rights or behalf cannot reopen the dispute.
5. In the instant case it is true that Petition in Nairobi ELRC No E 026 of 2021 [Francis Chengoli & Another Versus Kenya University Staff Union](#) was heard and determined by Onyango J in a judgment delivered on March 18, 2022. That dispute related to the irregular change of the trade union constitution herein and the Court ordered:
  - a) A declaration be and is hereby issued that the petitioners fundamental rights and freedoms under Article 27 and 41 of the [Constitution](#) have been contravened and violated by the respondents.
  - b) A declaration be and is hereby issued that the Kenya University Staff Union Constitution registered on the July 15, 2020 by the Registrar of Trade Unions is hereby reinstated.
  - c) A declaration be and is hereby issued that the Kenya University Staff Union constitution registered on the April 3, 2013 by the Registrar of Trade Unions is hereby reinstated.
  - d) A declaration be and is hereby issued that the petitioners and indeed the members of the union have a right to participate in the affairs of the union including vying for elective seats of the union.
  - e) A declaration be and is hereby issued expunging of all the discriminatory, illegal and offensive clauses hereinabove from the KUSU Constitution.
6. The Court has considered the present petition. It alleges that long after the judgment was delivered in Petition in Nairobi ELRC No E 026 of 2021 [Francis Chengoli & Another v Kenya University Staff Union](#) the respondent union has not held its elections and instead, its officials led by its Secretary General has initiated a process seeking to change the constitution of the trade union. It is the petitioners' case that the Secretary General and other officials are illegally in office and the trade union ought to hold elections in accordance with its constitution registered on April 3, 2013 by the Registrar of Trade Unions and as was reinstated by the judgment of the Court in the judgment by Onyango J.



7. In the circumstances, the Court finds that the present petition raises a fresh cause of action accruing long after the previously decided Petition in Nairobi ELRC No E 026 of 2021 *Francis Chengoli & Another v Kenya University Staff Union*. The matters in the present petition could not, with due diligence, be prosecuted as part of the dispute in that earlier petition. The cause of action in the instant case appears to have arisen consequential to the judgment in the earlier petition. The Court returns that in view of a fresh cause of action and in view of the parties in the present suit being substantially different from the ones in the previously decided petition, the present petition is not trapped by the doctrine of res judicata. The preliminary objection is liable to dismissal.

In conclusion, the preliminary objection dated May 9, 2023 and filed for the respondent is hereby dismissed with costs in the cause and parties to take a mention date for directions on expeditious hearing of the main petition.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 22ND JUNE, 2023.**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

