



**Universities Academic Staff Union (UASU) v Technical University of Kenya  
(Petition E195 of 2021) [2023] KEELRC 1817 (KLR) (27 July 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1817 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION E195 OF 2021**

**JK GAKERI, J**

**JULY 27, 2023**

**BETWEEN**

**UNIVERSITIES ACADEMIC STAFF UNION (UASU) ..... PETITIONER**

**AND**

**TECHNICAL UNIVERSITY OF KENYA ..... RESPONDENT**

**RULING**

1. By a Petition dated November 30, 2021, the Petitioner sued the Respondent alleging that the Respondent had failed to remit members union dues and agency fees deducted from members of the Petitioner, details of which were in the Respondent's knowledge.
2. It is the Petitioner's case that it has a Recognition Agreement and various Collective Bargaining Agreements (CBAs) with the Respondent through the Inter-Public Universities Councils Consultative Forum (IPUCCF) and the Respondent was obligated to deduct and remit to the Petitioner union dues and agency fees to the Petitioner.
3. That on account of the Respondent's failure, the Petitioner was unable to offer services to its members.
4. That the refusal and/or neglect to remit the dues was illegal and ultra vires and the Petitioner was aggrieved.
5. That on reconciliation of accounts outstanding between the parties on October 19, 2021 and November 2, 2021 and analysis of documents and the Respondent's bank statement, it was established that;
  - i. In 2015, the Petitioner received payments for June, October and December only.



- ii. In 2016, the Petitioner received payment for 11 months for July 24, 2021 and October 14, 2021 and no payment in November and underpayment was noted for certain months, such as January, February and July 2021.
  - iii. In 2017, no deductions were remitted for May, June, July, August, September, October, November and December.
  - iv. In 2019, part payment was received for February, March, April and May 2019 and January 6, 2020 and no payment was received for January, June, September, October and December.
  - v. In 2020/2021, no remittance was received.
6. The Petitioner is claiming the sum of Kshs 108,616,305.04 being unremitted and union dues for 2015 – 2021.
  7. The Petitioner cites article 41(2)(4) and 47 of the [Constitution of Kenya, 2010](#), Section 48(2)(a) and (b) and 50(1) of the [Labour Relations Act, 2007](#) to argue that the Respondent violated its Constitutional rights and it was in the interest of justice that the Respondent be compelled to remit the dues to the Petitioner.
  8. The Petitioner prays for judgement against the Respondent as follows;
    - a. Kshs 108,616,305.04.
    - b. Declaration that the Respondent is in breach of the Petitioner’s rights under Article 41 of the [Constitution of Kenya, 2010](#) and the [Labour Relations Act](#).
    - c. Damages for breach of Petitioner’s Constitutional rights.
    - d. Any other or further order the court may deem fit to grant.
    - e. Costs of the suit.

### **Respondent’s case**

9. In its response filed on May 23, 2023, the Respondent admits that it had a Recognition Agreement and a CBA with the Petitioner as alleged and had remitted dues though intermittently owing to financial challenges and denies violating the rights of members of the Petitioner.
10. The Respondent asserts that the instant Petition is frivolous, vexatious in that, a similar Petition No 39 of 2018 had previously been filed with the Respondent as a party, Petitioner had failed to persuade the court that its members rights had been violated and Petition No 39 of 2019 was withdrawn on June 29, 2019. The Petitioner had not disclosed the particulars of the constitutional violations or evidence of the violation and was making the court a debt collection agency and was sought blanket orders for the recovery of union dues and debt collection.
11. That the Petition was silent on how the amount being claimed was arrived at as it provided no evidence of what had been paid and the alleged bank statements were not filed.
12. The Respondent avers that it is forthright and is committed to honouring its obligations but the uncertainty with which it receives monies from the Government contributes to the delay in remitting deductions.



13. That the instant petition is similar to Petition No 112 of 2019 which directed the Petitioner to reconcile its accounts to ascertain the amount outstanding and the instant petition amounted to abuse of court process.
14. That the petition was filed on November 30, 2021 before the court had pronounced itself on petition No 112 of 2019 and thus seeks to circumvent the directions given in Petition No 112 of 2019.
15. The Respondent urged that court to dismiss the petition with costs.

### **Petitioner's Submissions**

16. Counsel for the Petitioner submitted on Respondent's breach of obligations, violation of Petitioner's rights and reliefs.
17. On the 1<sup>st</sup> issue, reliance was made on the provisions of Section 50(1) of the [Labour Relations Act, 2007](#) on the duty of the Respondent to remit dues to the Petitioner to urge that the Respondent failed to do so and was thus in breach of its obligations.
18. On violation of rights, reliance was made on the provisions cited in the petition.
19. On entitlement to the reliefs sought, reliance was made on the decision in [Universities Academic Staff Union V Jomo Kenyatta University of Agriculture and Technology & 6 others](#) (2020) eKRL to urge the court to hold in a similar manner.
20. The decision in [Kenya Engineering Workers Union V Jokali Handling Services Ltd](#) (2017) eKLR was also cited to urge that the Respondent's refusal to remit dues justified the orders sought.
21. In its supplementary Submissions, the Petitioner addressed the singular issue of the period of unremitted dues in the instant application and Petition No 39 of 2018 and No 112 of 2019 to urge that the Petitions were different as Petition No 112 of 2019 covered the period 2015 – 2019, the sum of Kshs 39,504,097.05 yet in the instant Petition the amount claimed is Kshs 108,616,305.04.
22. The Petitioner submitted that the Respondent had not adduced evidence to prove that the amount had been paid since the issue of non-remittance was uncontested.
23. That the Petition 39 of 2018 was withdrawn.

### **Respondent's submissions**

24. Counsel submitted on whether the Petition met the constitutional threshold and entitlement to reliefs.
25. On the first issue, counsel submitted that the remedy sought was enforceable through mechanisms other than the constitutional provisions. Reliance was made on the decision in [Four Farms LTD v Agricultural Finance Corporation](#) (2014) eKLR which applied the decision in [Damian Belfonte V The Attorney General of Trinidad & Tobago](#) as well as [Kenya Tertiary and Schools Workers Union \(Ketaswu\) V University Council University of Nairobi Kudheiba Workers \(Interested Party\)](#) (2021) eKLR to urge that issues of union dues and debt recovery did not lie in the domain of constitutional matters and the petition herein did not meet the threshold and should be dismissed.
26. As regards the reliefs sought, counsel urged that the Petitioner's aim was to circumvent the Orders of Onyango J in Petition 112 of 2019 on reconciliation and the petition should be dismissed to await the reconciliation.
27. Reliance was made on the sentiments of Rika J in [Dock Workers Union V Messina Kenya Ltd](#) (2017) eKLR on the threshold of a constitutional petition.



28. According to the Respondent, the Claimant was trivialising the Constitution.
29. The court was urged to dismiss the petition.

### **Determination**

30. The issues for determination are;
  - i. Whether the instant petition meets the threshold of a constitutional petition.
  - ii. Whether the Petitioner is entitled to the reliefs sought.
31. The principles that govern the threshold of a constitutional petition are well settled and applied in legions of decisions as encapsulated by Trevelyn and Hancox JJ in Anarita Karimi Njeru V Republic (1979) eKLR as follows;

“We would, however, again stress that if a person is seeking redress from the High Court on a matter which involves a reference to the constitution, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that which he complains, the provisions said to be infringed and the manner in which they are alleged to be infringed.”
32. Similar sentiments were expressed in Kiambu County Tenants Welfare Association V Attorney General & another (2017) eKLR.
33. The Petitioner cites Article 41 of the Constitution of Kenya, 2010 arguing that the Respondent violated the rights of the Petitioner and its members relating to exercising their right to engage and administer the activities of the union by its failure to remit amounts due to it. No other constitutional provision was relied upon.
34. Strangely, the Petitioner neither alleged nor adduced evidence to demonstrate that the non-payment of dues had adversely affected its operations.
35. Relatedly, the crux of the Petitioner’s case is the recovery of un-remitted union dues and agency fees from the Respondent.
36. Noteworthy, the Respondent admitted that it was behind schedule in the remittance of dues to the Petitioner owing to its financial position.
37. From the foregoing, it is clear that the object of the Petitioner is to recover outstanding dues and nothing more.
38. The court is constrained to agree with the Respondent’s counsel and the authorities cited that the subject matter of the petition does not implicate the articles of the Constitution and ought to have been pursued as a normal cause.
39. The court is not persuaded that the threshold enunciated in Anarita Karimi Njeru V Attorney General (supra) has been met.
40. The foregoing finds support in the sentiments of Muriithi J in Josphat Koli Nanok & another V Ethics and Anti-Corruption Commission (2018) eKLR as follows;

“. . . I think that it trivializes the Constitution, its values and principles when empty allegations of infringement are made. A Petitioner who cites a violation of the constitution



must by cogent evidence relate alleged breaches to real, concrete and direct loss, damage or injury arising out of the violation. It does not help to allege violation, drop conceptual abstracts and interpolations to fit some artificial textbook arguments of the nature and extent of constitutional principles.”

41. The court is further guided by the sentiments of Onyango J in *Kenya Tertiary and School Workers Union (Ketaswu) V University Council University of Nairobi* (supra) as follows;

“Litigants seem to have developed a penchant for filing petitions even where the issues raised are adequately covered in the statutes and do not raise constitutional questions . . . Constitutional petitions must be left to matters which are constitutional in nature and which cannot be adequately pleaded under any other form of proceedings.”

42. Rika J expressed similar sentiments in *Dock Workers Union V Messina Kenya Ltd* (supra) as follows;

“The Labour Relations Act provides the Petitioner with a mechanism for pursuing payment of trade union dues . . . It must be presumed the Act does not deny the Petitioner a remedy. Why does the Petitioner invoke the Constitution of Kenya. There is no justification in elevating the contractual and statutory differences between the parties to a constitutional dispute.”

43. From the foregoing, it is clear to the court that the Petition does not meet the test in *Anarita Karimi Njeru V Attorney General* (supra).

44. In a similar view, the Petitioner filed three petitions on related issues starting with Petition No 39 of 2018 which the Petitioner withdrew by letter dated June 27, 2019. This petition paved way for Petition No 112 of 2019 filed under Certificate of Urgency.

45. Strangely, before the matter was heard and determined, the Petitioner filed the instant petition dated November 30, 2021 but took no steps towards its prosecution, until a notice to show cause was issued by the court *suo moto* as directed by the Deputy Registrar on March 1, 2023 by which time a decision had long been made in petition No 112 of 2019.

46. In its judgement, the court directed the Petitioner to reconcile its accounts with the chapter accounts of the Respondent and the Respondent herein was allowed to liquidate the balance of the decretal sum by instalments, the sum of Kshs 12,579,994.58. Whereas petition No 112 of 2019 relate to arrears of dues from 2015 – 2019, the instant petition relates to 2015 – 2021.

47. For unexplained reasons, the Petitioner tendered no evidence as to how far it had complied with orders made on July 4, 2022 as they related to part of the dues sought in this petition.

48. The Petitioner’s counsel sought and was supplied with the by-products which accompanied the remittances.

49. Significantly, as early as September 29, 2021, before the instant petition was filed, the Respondent had committed itself in writing to have the matter resolved out of court.

50. The petitioner did not respond to the letter dated September 29, 2021 on the Respondent’s gesture.

51. Good faith dictates that proposals made by a party in dispute with another be considered and responded to with reasons for its rejection or acceptance or counter offer. Silence is not a viable option in dispute resolution.



52. Finally, it is not lost to the court that the Petitioner tendered no evidence on how the amounts claimed per year were arrived at.
53. Reference to the Petitioner's bank statements which were not provided or illustrated to the court left the amounts claimed unproven.
54. The Petitioner has merely thrown figures to the court to award without the necessary supportive documentation.
55. The provisions of Sections 107, 108 and 109 of the *Evidence Act* are unambiguous on the burden of proof.
56. The only document attached to the petition on dues is an unauthenticated 3 page document entitled "Analysis of UASU pending payments November 2021."
57. The Supporting Affidavit by Dr Constantine Wasonga makes no reference to the three (3) pages or any other document.
58. In sum, the Petitioner has not provided any supportive evidence to reinforce the figures claimed herein and distinguished the same from the amount outstanding under Petition No 112 of 2019.
59. Finally, having found that the instant petition does not meet the threshold of a constitutional petition, and having further found that it was filed while another petition litigating a similar matter and whose outcome would impact on it was on-going save for the arrears of 2020 and 2021 and remained unprosecuted until the Petitioner was moved by a notice to show cause more than 14 months after its filing and having also found that the Petition is unsupported by critical essential evidence, it is clear to the court that the petition is unmerited and no reliefs are available to the Petitioner and it is accordingly dismissed with no orders as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 27<sup>TH</sup> DAY OF JULY 2023**

**DR. JACOB GAKERI**

**JUDGE**

**ORDER**

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1** of the **Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B** of the **Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**DR. JACOB GAKERI**

**JUDGE**

