



**Kenya Universities Staff Union (Maseno University Branch) v Maseno University
(Petition E019 of 2022) [2022] KEELRC 1496 (KLR) (9 June 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1496 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
PETITION E019 OF 2022**

S RADIDO, J

JUNE 9, 2022

BETWEEN

**KENYA UNIVERSITIES STAFF UNION (MASENO UNIVERSITY
BRANCH) PETITIONER**

AND

MASENO UNIVERSITY RESPONDENT

RULING

1. The Kenya Universities Staff Union (the union) filed a Petition and Motion under a certificate of urgency on May 4, 2022. The court directed the union to serve the Petition and Motion upon Maseno University (the university).
2. The court also directed the parties to file and exchange affidavits and submissions ahead of the giving of further directions on June 7, 2022.
3. The university filed a replying affidavit on June 6, 2022.
4. When the parties appeared in court on June 7, 2022 to confirm compliance, the union urged the court to grant certain prayers of the Motion, which were in terms:
 - (2) Pending the hearing and determination of this application, a conservatory order do issue restraining the respondent from carrying out, undertaking or proceeding with any disciplinary proceedings against the applicant’s members based on any alleged offence(s) committed against the respondent’s documents titled ” Terms and Conditions of Service of Maseno University” and the ” Maseno University Human Resource Policy.”
 - (3) Pending the hearing and determination of this Petition herein, a conservatory order do issue restraining the respondent from carrying out, undertaking or proceeding with any disciplinary proceedings against the applicant’s members based on any alleged offence(s) committed against



the respondents documents titled ” Terms and Conditions of Service of Maseno University” and the ” Maseno University Human Resource Policy.”

5. The court took brief oral submissions from the parties, at the end of which the court directed the university to file a further affidavit addressing the fact whether the union participated or was involved in the revision and or preparation of the ” Terms and Conditions of Service of Maseno University”, 2020 and the ”Maseno University Human Resource Policy”.
6. The court made the directive because amongst the primary arguments advanced by the Union in seeking the interim interdicts was the assertion that it (the union) was a stranger to the two instruments as it had not been involved in the revision or preparation of the instruments.
7. The university filed the further affidavit on June 7, 2022.
8. The court has considered the Motion, affidavits and brief oral submissions and can make the following tentative findings:
 - i. The union wrote to the university on June 9, 2017, creating an impression that it may have participated in the development of the Human Resource Policy and Procedures Manual, 2017
 - ii. The union issued a memo to its members on September 30,2017, calling upon them to attend a meeting to discuss the Human Resource Policy and Procedures Manual and Terms of Service on October 2, 2017, suggesting it was privy to the development of the instruments.
 - iii. The terms and conditions of service of Maseno University, 2020 and the Maseno University Human Resource Policy govern the relationship between the university and other employees who are not members of the Union and thus out of the coverage of the collective bargaining agreement between the Union and the university.
 - iv. Restraining the university from using the two instruments at this interlocutory stage may imperil the university from exercising its powers of disciplinary control as an employer over employees who are not members of the Union.
9. Consequently, the court declines the invitation by the Union to issue conservatory orders at this stage of the proceedings before the ascertainment of the full facts.
10. The court issues these further directions:
 - i. The Petition to be determined on the merits.
 - ii. The union to file and serve any further affidavit together with submissions on or before July 15, 2022.
 - iii. The university to file and serve its submissions on or before August 17, 2022.
11. Judgment will be delivered on October 12, 2022.

ISSUED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 9TH DAY OF JUNE 2022.

RADIDO STEPHEN, MCIArb

JUDGE

Appearances

For union Mr Odeny instructed by Bruce Odeny & Co Advocates



**For the respondent Ms Joy A Akinyi, legal department, Maseno University
Court assistant Chrispo Aura**

