



REPUBLIC OF KENYA



KENYA LAW
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Universities Academic Staff Union (UASU) v Karatina University (Petition E011 of 2022) [2022] KEELRC 13018 (KLR) (28 October 2022) (Ruling)

Neutral citation: [2022] KEELRC 13018 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

PETITION E011 OF 2022

MN NDUMA, J

OCTOBER 28, 2022

IN THE MATTER OF ARTICLE 22(1) OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER CONTRAVENTION OF RIGHTS AND FUNDAMENTAL FREEDOMS UNDER ARTICLES 10, 41, 47, AND 232 OF THE CONSTITUTION OF KENYA, 2010

BETWEEN

UNIVERSITIES ACADEMIC STAFF UNION (UASU) PETITIONER

AND

KARATINA UNIVERSITY RESPONDENT

RULING

1. By a notice of motion dated January 19, 2022, the applicant union seeks the following orders: -
 1. Spent
 2. Spent
 3. Spent
 4. That a conservatory order be and is hereby issued restraining the respondent and/or the respondent's agents, servants, employees, nominees or any other person whosever acting at the behest of the respondent from enforcing and/or purporting to enforce or implement the respondent's new academic policy revising academic staff workload per semester from two (2) to four (4) for courses with practical component and from three (3) to four (4) for courses without a practical component pending the hearing and determination of the petition filed herewith.



5. That a conservatory order be and is hereby issued restraining the respondent and/or the respondent's agents, servants, employees, nominees or any other person whosever acting at the behest of the respondent from enforcing and or purporting to enforce or implementing the respondent's policy reducing part-time payments per course taught by any amount, pending the hearing and determination of the petition filed herewith.
 6. An order that the old academic policy of academic staff teaching two (2) courses with practical component and three (3) courses without a practical component per semester constitutes the normal academic workload and should continue to run.
 7. An order of permanent stay of the respondent's resolutions revising the academic workload and increasing the number of courses taught by academic staff per semester from two (2) to three (3) courses with practical component and from three (3) to four (4) courses without a practical component.
 8. An order restraining the respondent, its servants or agents from implementing any reduction in the pay rate of part-time teaching.
 9. That the honourable court be at liberty to issue any further orders in the interests of justice.
 10. That costs of the application be borne by the respondent/employer.
2. The application is premised on grounds 11 to 44 set out on the face of the application and buttressed in the supporting affidavit of Dr Constantine Wasonga, the Secretary General of the petitioner union. The very complex matter sought to be resolved by way of interim measures may be summarized that by a circular dated December 20, 2021, the respondent's Head of Department informed members of the academic staff of the respondent that the official allocation of courses to be taught in the semester beginning from Monday January 24, 2022 for first years and Monday February 28, 2022 for 2nd, 3rd and 4th years shall be four (4) courses per lecturer with additional course allocation for part-time to be made later.
 3. That the said academic policy said to have been unilaterally developed has two profound consequences being
 - i. Increased full-time/normal teaching workload for academic staff from two (2) to four (4) courses per semester for courses with practical component and (3) to four (4) courses per semester for courses without practical component.
 - ii. Secondly, the reduced rate of performance payments per course taught in a semester from Kshs 72,400 per course (comprising Kshs 1700 teaching per hour, Kshs 1000/= per examination paper set and Kshs 50/= per script marked) to Kshs 39,000 per course taught.
 4. That the previous academic policy had been developed in 2014 in a highly consultative process taking into account views of all academic staff.
 5. That the new measures, are arbitrary, non-consultative and violates the employment and administrative rights of the academic staff and same need to be injuncted pending the hearing and determination of the petition.
 6. The application is opposed by a most comprehensive replying affidavit of Rufus Mucai Muchiri the Vice – Chancellor of the respondent who deposes that the impugned circular dated December 20, 2021 is an internal memo issued by the Head of Department Business and Economics which is ordinarily issued at least six weeks to commencement of a semester.



7. That the circular does not seek to change and bring into effect a new policy as alleged. That the policy has been in place since August, 2018 and the basis of the contract of the minimum work load for a lecturer is as set out in detail in the replying affidavit - paragraph 4(a-h).
8. That the lecturers are involved in the adjustment and distribution of the academic workload as set out in paragraph 5 (a) to (f) and that the change to part-time rates, is explained in paragraph (a) to (g).
9. That there is justification for the change as set out under paragraph 8 (a) to (d). That the prevailing terms and conditions for academic members of staff are set out in annex “Kar U-9.”
10. That the petitioner/applicant has not exhausted all the available avenues provided for before raising the matters in court. That there is an on-going internal collective bargaining agreement that is yet to be concluded. That a trade dispute exists since 2019, which comprise in general of terms of academic workload.
11. That the conciliator advised that the parties need to agree on the disputed issues and the respondent is ready and willing to engage the petitioners in coming up with terms and conditions that are collectively negotiated.
12. That the matters raised are not constitutional in nature. That the petition is misconceived and an abuse of court process.
13. That it is wrong for the petitioner/applicant to by pass known procedures of negotiating terms and conditions of service by raising the matters in a constitutional petition.
12. That the application be dismissed with costs.
13. The applicant filed further affidavit of Dr Wasonga, joining issue with the respondent and reiterating the deposition in the supporting affidavit and prays that interim relief be granted pending the hearing and determination of the petition.
14. The issue for determination at this stage is whether the applicants have satisfied the triple requirements for grant of interim injunction sought in the application pending the hearing and determination of the petition.
15. These requirements are well settled in the case of *Giella -vs- Cassman Brown Company Limited* (1978) EA and restated in many other cases including [*Centre for Rights Education and Awareness \(CREAW\) and 7 others -vs- Attorney General*](#) [2011] eKLR where the court held: -

“.....a party seeking a conservatory order only requires to demonstrate that he has *prima facie* case with a likelihood of success and that unless the court grants the conservatory order there is real danger that he will suffer prejudice as a result of the violation or threatened, violation of the Constitution.”
16. The applicant relies on the case of [*Kenya Small Scale Farmers Forum & 6 others -vs- Republic of Kenya & 2 others*](#) [2013] eKLR where the court held: -

“One of the golden threads running through the current constitutional regime is public participation in governance and the conduct of public affairs.”
17. On the question of irreparable prejudice if the injunctive relief is not granted, the applicant relies on the *CREAW* case (*supra*) stating that the substantive increase of workload for less pay is greatly prejudicial to the members of the applicant and unless a conservatory order is granted the members of the union



would suffer unfair labour practice to their loss and detriment in millions of Kenya Shillings, which respondent may be not able to compensate in due course.

18. The court notes that the subject of the petition and the application is complex and a matter not only affecting the parties to the suit but has far reaching implications to thousands of students and recipients of the contested academic content.
19. The respondent is a public university and part of the contested payments come from public coffers and the Hon Attorney General has not been joined to this suit.
20. The reliefs sought in the petition to declare the alleged new academic policy unlawful and unconstitutional has in the above context far reaching consequences affecting multiple stakeholders not joined to this suit.
21. The court is unable to find that the applicant has made out a *prima facie* case with a probability of success.
22. Furthermore, given the continuous collective bargaining between the parties herein on terms and conditions of service, the court is not persuaded that the applicant union and its members would suffer irreparable loss that cannot be remedied by way of damages and/or revised academic content and/or arrear payments for any overload that may have been overlooked in the academic policy set out in the circular dated December 20, 2021.
22. That in any event, whereas this petition and the application was filed on January 20, 2022, the said academic policy was due for implementation from January 24, 2022, a few days thereafter in respect of first years and on February 28, 2022 in respect of year (2) to four (4) about a month later.
23. This court is not given to issuing orders in vain recognizing that many months have passed since then and the horse may have already bolted from the staple.
24. It is in the interest of justice and fair play that the complex matters raised in this suit be determined upon full hearing of the petition on the merit. The reliefs sought in the petition are still available to the petitioner if indeed they are merited.
25. Accordingly, the application is not granted, the applicant having failed to satisfy the essential elements required considering all the circumstances of this case.
26. Costs in the cause.

DATED AND DELIVERED AT NAIROBI (ELECTRONICALLY) THIS 28TH DAY OF OCTOBER, 2022

Mathews N. Nduma

Judge

Appearances

Mr. Osajo for Applicant

M/s Mumbi for Respondent

Ekale: Court Assistant

