



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR**  
**RELATIONS COURT AT NAIROBI**  
**PETITION NO E082 OF 2020**

**BETWEEN**

**KENYA UNIVERSITIES STAFF UNION-**

**KENYATTA UNIVERSITY BRANCH.....PETITIONER**

**VERSUS**

**1. KENYATTA UNIVERSITY**

**2. CHAIRPERSON, UNIVERSITY COUNCIL KENYATTA UNIVERSITY**

**3. VICE-CHANCELLOR KENYATTA UNIVERSITY.....RESPONDENTS**

**RULING**

1. In its Application dated 16<sup>th</sup> November 2020, the Petitioner seeks orders *inter alia*, that pending hearing of the Petition, the Court issues conservatory orders temporarily quashing suspension letters issued to Petitioner's Members; and that pending hearing of the Petition, the Respondent is restrained from suspending, intimidating, victimizing and harassing Petitioner's Members who participated in picketing on 26<sup>th</sup> October 2020 and 27<sup>th</sup> October 2020.

2. The Application is based on the Affidavit of Isaac Lokeris, Branch Secretary of the Petitioner, sworn on 16<sup>th</sup> November 2020.

3. Lokeris explains that the 1<sup>st</sup> Respondent failed to implement 2013-2017 and 2017-2021 CBAs. Consultative meetings were scheduled between the Parties. The 3<sup>rd</sup> Respondent however walked out on the Petitioner in one such meeting, leading to protest by participating Trade Unions, including the Petitioner.

4. On 22<sup>nd</sup> October 2020, the Unions issued a joint Notice of Picketing to the Respondents. On 26<sup>th</sup> October 2020 and 27<sup>th</sup> October 2020, Petitioner's Members alongside their Colleagues from other Unions, picketed peacefully.

5. The Respondents issued an internal memo on 27<sup>th</sup> October 2020, terming the picketing as an illegal and unprotected strike. The Respondents threatened to victimize the picketers. The Petitioner called off the picket.

6. On 4<sup>th</sup> November 2020, the Respondents issued the picketers suspension letters, which the Petitioner states was discriminatory and aimed at victimizing the picketers. The Petitioner argues that suspension is in violation of Articles 36,37,41 and 236 of the Constitution. It is argued by the Petitioner that the Respondents wrongly invoked Section 80 of the Labour Relations Act, which regulates strikes, and not picketing.

7. The Petitioner underscores this argument, in Submissions filed on 9<sup>th</sup> February 2021.

8. The Respondents are opposed to the Application. They rely on the Replying Affidavit of Acting Deputy Vice-Chancellor of the 1<sup>st</sup> Respondent, Prof. James Kung'u, sworn on 3<sup>rd</sup> December 2020.

9. Prof. Kung'u states that the Petitioner has not exhausted dispute resolution mechanisms available to the Parties, before filing of the Petition. The Petitioner and the 1<sup>st</sup> Respondent have a Recognition Agreement.

10. The Recognition Agreement forbids strike or other action to stop or hinder the operations of the 1<sup>st</sup> Respondent, unless and until-

- a. Attempts to resolve the dispute amicably have hit a deadlock and such deadlock is recorded between the Petitioner and the 1<sup>st</sup> Respondent.
- b. After such deadlock, 21 days' strike notice has been given and lapsed.
- c. A further 7 days' strike notice has been given as stipulated in law and has since lapsed.

11. The matters over which the Petitioner called its Members to picket, are subject of this Court's proceedings in CBA Number 1,2 and 3 of 2020. The Petitioner acted in bad faith by calling for an illegal strike, disguised as a picket, over matters that are pending before the Court.

12. Prof. Kung'u states that the Parties have always engaged on the CBA, and denies that he walked out on the Unions. Parties had agreed to meet on 8<sup>th</sup> October, 2020 with the Unions represented by 9 Officials, to decongest the meeting hall. Instead the Unions brought 18 Officials and became confrontational when asked by the Vice-Chancellor why they had reneged on the number of Attendees. The meeting was called off.

13. The 1<sup>st</sup> Respondent suspended the picketers to allow for investigations and disciplinary processes. Its view is that there is prima facie, grounds to warrant summary dismissal of the picketers. It is only fair that the 1<sup>st</sup> Respondent is allowed to carry out the disciplinary process in accordance with the Terms of Service applicable to the Staff.

**The Court Finds: -**

14. The Petitioner has not established that an order for temporary quashing of the suspension letters, is merited. Similarly, there is no evidence that the Petitioner's Members have been or are being victimized, harassed and/ or intimidated by the Respondents.

15. It is common ground that the Petitioner's Members, withdrew their labour for 2 days – 26<sup>th</sup> and 27<sup>th</sup> October 2020. Whether they chose to characterize that industrial action as a picket, rather than a strike, does not affect the fact that they withdrew their labour, in concert with Staff belonging to other workplace Trade Unions.

16. Their conduct for 2 days, involved ***“cessation of work by Employees acting in combination, or a concerted refusal or a refusal under a common understanding of Employees to continue to work, for the purpose of compelling their Employer or an Employer's Organization of which their Employer is a Member, to accede to any demand in respect of a trade dispute.”*** This is the definition of a strike, under Section 2 of the Labour Relations Act.

17. The matters over which the Petitioner called its Members to industrial action, are *sub judice*, in this Court's CBA 1,2, and 3 of 2020. There is a pending dispute over CBA items. Why not ventilate the dispute fully in Court?

18. The Respondents should be allowed to investigate the circumstances surrounding the industrial action. Suspension of the Petitioner's Members has not been demonstrated to have been taken discriminatively or in violation of the Statute and the Constitution.

19. There is *prima facie* evidence that the Employees were involved in employment offences under Section 44[4] [a] of the Employment Act and Section 80 of the Labour Relations Act. They are suspected of acting outside their Terms of Service and in breach of the Employment Act and the Labour Relations Act.

20. The Court must allow the Respondents, in exercise of their managerial prerogative, the opportunity to investigate the incident, and take the involved Employees through a disciplinary process. The Court would be interfering with a legitimate administrative process, by quashing the letters of suspension.

***IT IS ORDERED: -***

***a. The Application by the Petitioner, dated and filed on 16<sup>th</sup> November 2020 is declined.***

***b. No order on the costs.***

**DATED AND DELIVERED AT NAIROBI, THIS 19TH DAY OF MARCH, 2021**

**JAMES RIKA**

**JUDGE**