



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAKURU**

**JUDICIAL REVIEW NO. E004 OF 2021**

**IN THE MATTER OF LABOUR RELATIONS ACT AND THE UNIVERSITIES ACADEMIC UNION CHAPTERS ELECTIONS,  
EGERTON UNIVERSITY CHAPTER**

**AND**

**IN THE MATTER FOR APPLICATION FOR JUDICIAL REVIEW PROCEEDINGS FOR ORDERS OF CERTIORARI AND  
MANDAMUS.**

**REPUBLIC.....APPLICANT**

**VERSUS**

**THE REGISTRAR OF TRADE UNION.....RESPONDENT**

**AND**

**UNIVERSITIES ACADEMIC STAFF UNION**

**EGERTON UNIVERSITY CHAPTER.....EX-PARTE APPLICANT**

**AND**

**DR. JOSEPH JUMA MAFURA.....1<sup>ST</sup> INTERESTED PARTY**

**ELIUD OKUMU ONGOWO.....2<sup>ND</sup> INTERESTED PARTY**

**JOHANA OYUGI NYANJONG.....3<sup>RD</sup> INTERESTED PARTY**

**UNIVERSITIES ACADEMIC STAFF UNION....4<sup>TH</sup> INTERESTED PARTY**

**SAMUEL MUGA K'OLALE.....5<sup>TH</sup> INTERESTED PARTY**

**REANNAH R. NYAKOAH.....6<sup>TH</sup> INTERESTED PARTY**

**FREDRICK M MWANGANGI.....7<sup>TH</sup> INTERESTED PARTY**

**RULING**

1. The Ex-parte Applicant herein filed an Amended Notice of Motion application dated 27<sup>th</sup> April, 2021 on the 28<sup>th</sup> April 2021 through the firm of Mirugi Kariuki and company advocates seeking the following orders; -

***1) That pending hearing and determination of this matter, leave granted to file the substantive motion, does operate as a stay of Respondent's decision, registering the following persons as Officials of the Universities Academic Staff Union, Egerton University Chapter.***

*(i) Samuel Muga K'Olale;*

*(ii) Reannah R. Nyakoah; and*

*(iii) Fredrick M. Mwangangi.*

**2) THAT the Honourable court be pleased to issue the following orders of judicial review against the Respondent**

**a) Certiorari quashing the Respondent's decision to register the following persons as co-opted officials of the Universities Academic Staff union — Egerton University Chapter.**

*(i) Samuel Muga K'Olale;*

*(ii) Reannah R. Nyakoah; and*

*(iii) Fredrick M. Mwangangi*

**b) Mandamus compelling the Respondent to register the following persons as the co-opted officials of the Universities' Academic Staff Union, Egerton University Chapter.**

*(i) Dr. Joseph Juma Mafura;*

*(ii) Mr. Eliud Okumu Ongowo;*

*(iii) Mr. Johanna Oyugi Nyanjong.*

**3) THAT costs of this application and of the chamber summons dated 14<sup>th</sup> April 2021 (application for leave) be provided for and borne by the Respondent.**

2. The application is also made on the following grounds:-

a) That there is established and registered in accordance with Labour Relations Act No. 14 2007, the Universities Academic Staff Union.

b) That in accordance with the constitution of the said union, in particular article 19, there is established and registered pursuant thereunder, the Universities' Academic Staff union, Egerton University Chapter.

c) That Article 19 (f) of Union's Constitutions, provides for the Chapter organizations that has an Executive Committee comprising of Chapter Chairpersons, Chapter Vice-Chairpersons, Chapter Secretary General, Chapter Assistance Secretary General, Chapter Treasurer, Chapter Assistant Treasurer, Chapter Organizing Secretary and other co-opted officials to ensure representations of special interest groups.

d) That the Executive Committee such as the Chairperson, Vice-Chairperson, Secretary, Assistant Secretary, Treasurer, Assistant Treasurer and the organizing secretary are elective positions and the elected membership of the Executive Committee co-opt the members to represent the special interests' groups.

e) It was stated that pursuant to a letter dated 13<sup>th</sup> January 2021 to all Chapter secretaries, the Unions National Secretary General called for Chapters Election. which Egerton University Chapter held its elections on the 24<sup>th</sup> March 2021 and the following officials were elected:

- Chairman ~ Prof. Mwaniki S. Ngari
- Vice-Chairman-Joshua Kimutai Langat,
- Secretary- Dr. Grace W. Kibue,
- Deputy Secretary-Dr. Clement Lenachuru,
- Treasurer-Josphine W. Njoroge,
- Assistant Treasurer – Dr. Maureen Cheresek and Trustees were Dr. Dinah Jeruto Kipkebut, Dr. Owen Ngumi and Jenapha K. Kumba.

f) After the election the elected officials of the Chapter, held a meeting on the 26<sup>th</sup> March 2021 and resolved to co-opt the following persons to represent special interests in the Committee;

- Dr. Joseph Juma Mafura,
- Mr. Eliud Okumu Ongowo and
- Mr. Johanna Oyugi Nyanjong(the 1<sup>st</sup> to 3<sup>rd</sup> interested parties herein).

g) That the Union communicated the co-opted members by its letter dated 30<sup>th</sup> March, 2021 to the Registrar of Trade Union. However the Respondent in total disregard of the Chapters lawful decision, registered the following persons as co-opted members of the chapter;

- Samuel Muga K'Olale,
- Reannah R. Nyakoah and
- Fedrick M. Mwangangi(the 5<sup>th</sup> to 7<sup>th</sup> interested parties herein).

h) That the later members were not eligible to be co-opted for the reason that, the 5<sup>th</sup> Interested party retired with effect from 8<sup>th</sup> July, 2020, the 7<sup>th</sup> Interested party vied to be the chairperson of the union but lost while the 6<sup>th</sup> Interested party was a former delegate whose term expired on 24<sup>th</sup> March, 2021.

i) That the respondent's actions of registering strangers to the membership of the union committee is unlawful and ought to be quashed by this Court and the Respondent be compelled to registered the legally co-opted persons.

3. The application is also supported by the Supporting Affidavit of **Dr. Grace Wanjiru Kibue** deponed on 27<sup>th</sup> April, 2021 and whose averments reiterate the facts in the above grounds.

4. The interested parties herein opposed this Application through a Replying Affidavits filed by the 5<sup>th</sup> to 7<sup>th</sup> Interested parties on 24<sup>th</sup> May, 2021 and the replying affidavit filed by the 1<sup>st</sup> to 3<sup>rd</sup> interested parties on 10<sup>th</sup> May, 2021.

#### **1<sup>st</sup> -3<sup>rd</sup> interested parties' response.**

5. The interested parties' herein, through the 1<sup>st</sup> interested party, **Dr. Joseph Juma Mafurah**, and in support of the Ex-parte Applicant's application reiterated the averments in the Grounds of the Ex-parte Applicant's Application of 27<sup>th</sup> April, 2021 and in addition stated that the Ex-parte applicant is the only party authorized to forward names of co-opted members of the Committee as such the 5<sup>th</sup> to 7<sup>th</sup> Interested party are illegally registered as members of the Union Committee and urged this Court to allow the application as prayed to enable them carry out their mandate as members of the union committee representing special interest groups.

#### **4<sup>th</sup> to 7<sup>th</sup> Interested parties' Response.**

6. The secretary general of the 4<sup>th</sup> Interested party, **Dr. Constantine Wasonga**, swore the replying affidavit on its behalf and on behalf of the 5<sup>th</sup> to 7<sup>th</sup> Interested parties and stated that the Ex-parte Applicant being a chapter / branch of the 4<sup>th</sup> interested party had no *locus standi* to sue as the said chapter is not a legal entity. Further that the authority to sue is a preserve of the National Union.

7. It was stated that the 5<sup>th</sup> to 7<sup>th</sup> interested parties were co-opted as members of the Chapter committee following a general meeting held on 24<sup>th</sup> March, 2021 in accordance with Article 19(f) of the Constitution. Subsequently their names were forwarded by the National Union Secretary to the respondent alongside other elected officials for registration.

8. The interested parties aver that the Co-opted members were elected alongside the Chapter Official and the said exercise was presided over by the Respondents representative being the County Labour Officer who filed returns and forwarded the names of the duly elected officials and the co-opted Members being the 5<sup>th</sup> to 7<sup>th</sup> interested parties.

9. That the meeting purportedly conducted by the chapter official on 26<sup>th</sup> March, 2021 to co-opt the 1<sup>st</sup> to 3<sup>rd</sup> Interested parties was illegal as the members of the chapter were not informed, neither was the County labour officer. further that the official of the chapter lacks authority to co-opt members to the committee.

10. The interested parties therefore urged this Court to dismiss this Application for lacking merit.

11. The ex-parte Applicant filed a rejoinder to the interested parties' averments and stated that the election carried out on 24<sup>th</sup> March, 2021 was for elected official only and that there was no agenda for election of co-opted members therefore the report by the County Labour Officer is incorrect to the extent that it purports to have elected co-opted members on 24<sup>th</sup> March, 2021.

12. It was contended that there is no requirement by law that co-opting of members should be carried on the same day further that it is carried out after the election as a matter of practice in order to fill in special gaps created as a result of election which practices is carried out in other chapter or branches such as Technical university of Kenya, Meru university of science and technology, JKUAT, machakos university and Garissa University.

13. On the issue of it lacking, locus standi, the Ex-parte applicant stated that the chapter have authority to sue on behalf of a member and referred to Nairobi ELRC No. 773 of 2017 where UASU sued its National Union and Mombasa Petition Number 6 of 2019 where UASU Mombasa Chapter sued Mombasa Technical University.

14. That the 4<sup>th</sup> Interested party acted ultra vires by forwarding the names of the alleged co-opted members to the Respondent. Further that the 4<sup>th</sup> to 7<sup>th</sup> Interested parties have not tabled any evidence to affirm that indeed the said members were elected as required save for the disputed county Labour Officers report which according to the applicant was concocted.

15. The parties herein filed submissions with the Ex-parte Applicant filling on 2<sup>nd</sup> June, 2021 and a further submission on 10<sup>th</sup> June, 2021, the 1<sup>st</sup> to 3<sup>rd</sup> Interested party filed on 1<sup>st</sup> June, 2021 and the 4<sup>th</sup> to 7<sup>th</sup> Interested party filed on 7<sup>th</sup> June, 2021.

#### **Ex-parte Applicant's Submissions.**

16. The Applicant herein submitted that it has locus standi to bring this Suit on behalf of its members by dint of section 25 of the Labour Relations Act which requires each union to register the branch union it establishes, which according to the applicant meant that the powers of the National Union were shared with the Branch or chapter this giving it capacity to sue. Further that other Branches/ Chapter of the national Union have successfully sued in Court as illustrated in the Further Affidavit of 25<sup>th</sup> May, 2021.

17. It was argued that the co-opting of members to the chapter committee was not an agenda of the Election carried out on 24<sup>th</sup> May, 2021. Further that according to the circular on UASU election 2021, number UASU/CIRC/202, there was no indication of the co-opted members being elected as alleged. He argued also that the Exit Report of UASU Egerton chapter election was a comprehensive report that contained all activities that took place on 24<sup>th</sup> March, 2021 and the co-opting of members was not indicated in the said report. Accordingly, it was submitted that coopting of the special interest members could only be carried out after the chapter official are elected and in office to enable the chapter identify gaps and fill the said gaps which practice is conducted in other chapters of UASU.

18. The ex- parte applicant thus submitted that the 4<sup>th</sup> interested party worked in cahoots with the County Labour officer and doctored and forwarded the names of the 5<sup>th</sup> to 7<sup>th</sup> Interested parties as the co-opted members when there was no evidence of how the said persons were co-opted and or elected. Accordingly, he submitted that the actions of the 4<sup>th</sup> Interested party and the Respondent are illegal null and void and ought to be quashed by this Court.

19. The Ex-parte Applicant buttressed his argument by citing the Ugandan Case of Pastolic –v- Kabale District Local Government Council & another[2008]EA 300..

20. With regards to the authority cited by the Respondent being Universities Academic staff union(UASU) -v- Jomo Kenyatta University of Agriculture and Technology(Jkuat) [2006] eklr, counsel urged this Court to ignore the said authority as the position has changed as held in the Court of Appeal case of **Law Society of Kenya ,Nairobi Branch-v- Malindi society & others[2017] eklr** that;

**“It is not in dispute that the respondents were not parties to the petition whose proceedings gave rise to the impugned judgment; that LSK was party to the said petition and filed a statement supporting the petition; that both the LSK and the respondent branches are creatures of the same statute; that the LSK itself is established under section 3 of the Act as a body corporate with perpetual succession and a common seal to discharge the mandate provided for under section 4 of the Act; and that section 24 of the Act creates the Branches, while section 15 designates them as part of the organs of the LSK.**

21. Section 24(2) of the Act provides as follows:-

**“ 24. Branches of the Society**

**(1) There shall be the following eight branches of the consisting of the centre set out in the schedule;(a) Coast,(b) Rift Valley. (c) North Rift,(d) West Kenya,(e) South West Kenya,(f) Mount Kenya,(g) South Eastern, and (h) Nairobi**

**(2) The branches shall-**

**(a) deal with issues regarding practice within their centres;(b) address issues relating to the welfare of the members practicing in their centres;(c) inform the Council of any matters that affect members with the branches that require the Council's engagement with other stake-holders on behalf of the branch.”**

22. We have construed the above provision on our own and find nothing either in sections 15 or 24 (2) of the Act to suggest that the branches are not autonomous in their own sphere of influence. There is no inbuilt mechanism in those provisions that requires LSK to sanction each and every action executed by the branches for and on behalf of their respective members. We therefore agree with the submission of the respondents that the branches are semi-autonomous, if not autonomous. Further, the issues raised by the said branches of LSK are in line with the provisions of Section 24 (2) (a) of the Act as they relate to practice within their centres.”

21. Counsel further cited the Supreme Court case of **Mumo matemu –v- trusted society of human rights Alliance & 5 others [2014] eKLR**. where the Court held that;

**“It is to be noted that the promulgation of the 2010 Constitution enlarged the scope of *locus standi*, in Kenya. Articles 22 and 258 have empowered every person, whether corporate or non-incorporated, to move the Courts, contesting any contravention of the Bill of Rights, or the Constitution in general. In *John Wekesa Khaoya v. Attorney General, Petition No. 60 of 2012; [2013] eKLR* the High Court thus expressed the principle (paragraph 4):**

**“...the *locus standi* to file judicial proceedings, representative or otherwise, has been greatly enlarged by the Constitution in Articles 22 and 258 of the Constitution which ensures unhindered access to justice...”**

22. Accordingly, he argues that the branch/ chapter has been vested with locus to sue on its own behalf and on behalf of its members, therefore urged this Court to allow the Application as prayed.

#### **4<sup>th</sup> to 7<sup>th</sup> Interested parties’ submissions.**

23. The interested parties herein submitted from the onset that the ex-parte Applicant lacks *locus standi* to bring this suit and that section 25 of the Labour Relations Act does not in any way confer powers to the Union branches to sue. It buttressed its argument by citing the case of **Universities Academic staff union(UASU) -v- Jomo Kenyatta University of Agriculture and Technology(Jkuat) [2006] eKLR** where the court held that a union branch does not have locus standi to sue.

24. Accordingly, it was argued that since the Ex-parte Applicant lack legal capacity to institute and sustain this Suit the same ought to be dismissed in its entirety.

25. On the issue of election of co-opted members of the union chapter, it was submitted that the UASU Union constitution under Article19(f) gives a composition of the Chapter executive committee to include 3 co-opted members. Further that Article 19(g) of the Union constitution provide for the manner in which the said executive members shall come into office which is by election conducted every 5 years in a general meeting of UASU Chapter members. Therefore, the 5<sup>th</sup> to 7<sup>th</sup> Interested parties were duly elected in the general meeting held on 24<sup>th</sup> March, 2021 and they are legally in office.

26. It was submitted that the meeting conducted by the Chapter official on 26<sup>th</sup> March, 2021 purporting to select the co-opted members to the union chapter executive committee was illegal since the said official acted contrary to the union constitution. Further that as at 26<sup>th</sup> March, 2021 the chapter official had not be registered therefore any action carried out by the said executive official was null and void and contrary to section 35(5) and (6) of the Labour relations Act and the act of selecting the co-opted members in exclusion of the chapter members and County labour officer went against Article 41(2) of the Constitution.

27. He submitted that the Ex-parte Applicant has not met the threshold to warrant the issuance of Judicial Review Orders as it failed to demonstrate how the respondent decision was illegal, irrational and tainted with procedural impropriety as was held in the case of **Republic –v- National Land Commission and another Ex-parte farmers’ choice limited [2020] eKLR**.

28. The interested parties thus urged this Court to dismiss the Application with costs to them.

#### **1<sup>st</sup> to 3<sup>rd</sup> Interested parties submissions**

29. The gist of the 1<sup>st</sup> to 3<sup>rd</sup> interested parties submission is that they are the duly co-opted members of the chapter executive committee having been elected by the chapter official therefore they have legitimate expectation of serving the Chapter Union which can only be achieved if this Court allows the Ex-parte Applicant application and quashed the decision of the Respondent of registering the 5<sup>th</sup> to 7<sup>th</sup> Interested parties as Chapter co-opted members and instead register them as the rightfully co-opted members.

30. I have examined the averments and submissions of the parties herein. The issues for this court’s determination are as follows;

- 1. Whether the Ex-parte applicant has locus to sue in this application.**
- 2. Whether the 5<sup>th</sup> & 7<sup>th</sup> Interested parties were properly co-opted as members of the Chapter Committee.**
- 3. What remedies this court can grant in the circumstance.**

#### **1. LOCUS**

31. The respondents have argued that the applicants herein have no locus to sue in this matter as a branch chapter.

32. In confirming whether indeed the applicant herein have locus or not, I refer to the Labour Relations Act (LRA) under Section 21 of the Labour Relations Act 2007 provides that a registered Trade Union is a body corporate with capacity to sue and be sued. The Act is however silent on issue of branch chapter’s capacity.

33. That notwithstanding Section 25 of the Labour Relations Act deals with registration of Union branches. Indeed no branch can act as such

without being Registered - Section 25 (5) of the Labour Relations Act is instructive that:-

***“No person shall act or purport to act as an official of a branch or trade union, employers’ organization or federation if that branch is not registered or has had its registration cancelled.”***

34. The operative word here is registration of the branch and it is registration that gives the branch capacity and indeed locus to perform its functions.

35. I wish also to refer to the Court of Appeal decision in **LSK Nairobi Branch VS Malindi LSK & Others (Supra)** while relying on **Mumo Matemo Case** where the learned JJA stated as follows:-

***“24.....it is to be noted that the promulgation of the 2010 constitution enlarged the scope of Locus Standi in Kenya. Article 22 & 258 have empowered every person, whether corporate or non-corporate to move the court, contesting any contravention of the Bill of Rights on the constitution in general....”***

***The locus standi to file judicial proceedings, representation or otherwise has been greatly enlarged by the constitution in Article 22 and 258 of the constitution which ensures unhindered access to justice.....”***

36. Indeed that is the position and any decision otherwise will mean the applicants herein are at the mercy of the 4<sup>th</sup> respondent in whichever manner the 4<sup>th</sup> respondent acts and therefore they are hindered from accessing justice which is unconstitutional and against the express provision of the constitution and especially Article 50 (1) thereof.

## 2. CO-OPTION

37. The applicants herein aver that the 4<sup>th</sup> respondents co-opted the 5<sup>th</sup> & 7<sup>th</sup> interested party improperly. The 4<sup>th</sup> respondents aver that the 5<sup>th</sup> & 7<sup>th</sup> interested party were properly co-opted during a meeting on 24<sup>th</sup> March 2021.

38. In determining whether the 5<sup>th</sup> to 7<sup>th</sup> interested party were properly co-opted, I have looked at Section 19 of the Union constitution which talks about chapters of union.

39. Section 19 (g) of the Union constitution indicates that:-

***“All chapter officials shall be elected every five years subject to Section 14 by secret ballot at the chapter general meeting and shall remain in office for five years.....”***

40. This section does not cover co-opted members nor how they are to be co-opted. The exit report for UASU Egerton University Chapter on election held on 24<sup>th</sup> March 2021 and signed by UASU Electoral Committee members had detailed out what transpired on 24<sup>th</sup> March, 2021. The report shows who were elected at the elections. There is no indication that co-option were done on this day.

41. The averment by the respondent that this happened on this day is therefore not supported by evidence.

42. Appendix GW7 is a resolution of the executive committee in their meeting held on 26<sup>th</sup> March 2021 where the 1<sup>st</sup> to 3<sup>rd</sup> interested parties were co-opted as members of the committee. In common palace co-options are done by a committee wishing to add value to its membership and include special interest groups. This cannot be done by any other group but the committee itself.

43. In the circumstances without issue of co-option being covered in the exit report concerning the election and with the knowledge that co-options should be done by the committee to fill in any inadequacies. I find the submissions by the respondents and 4<sup>th</sup> to 7<sup>th</sup> interested parties without merit and I reject it.

## REMEDIES

44. Following the above analysis, I find the applicants case has merit and I allow the application in the following terms;

**1. That pending hearing and determination of this matter, leave granted to file the substantive motion, does operate as a stay of Respondent's decision, registering the following persons as Officials of the Universities Academic Staff Union, Egerton University Chapter.**

**(i) Samuel Muga K’Olale;**

**(ii) Reannah R. Nyakoah; and**

**(iii) Fredrick M. Mwangangi.**

**2. THAT the Honourable court be pleased to issue the following orders of judicial review against the Respondent**

a) Certiorari quashing the Respondent's decision to register the following persons as co-opted officials of the Universities Academic Staff union — Egerton University Chapter.

(i) Samuel Muga K'Olahe;

(ii) Reannah R. Nyakoah; and

(iii) Fredrick M. Mwangangi

c) Mandamus compelling the Respondent to register the following persons as the co-opted officials of the Universities' Academic Staff Union, Egerton University Chapter.

(iv) Dr. Joseph Juma Mafura;

(v) Mr. Eliud Okumu Ongowo;

(vi) Mr. Johanna Oyugi Nyanjong.

3. THAT costs of this application and of the chamber summons dated 14<sup>th</sup> April 2021 (application for leave) be provided for and borne by the Respondent.

4. The respondents will pay cost of this suit.

**RULING DELIVERED VIRTUALLY THIS 22ND DAY OF JUNE, 2021.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:-**

Kibet for claimant – present

Leting for respondent

Mukira for 1<sup>st</sup> to 3<sup>rd</sup> Interested party – present