



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS**

**COURT OF KENYA AT NAIROBI**

**PETITION NO. E127 OF 2021**

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

**VERSUS**

**MULTIMEDIA UNIVERSITY OF KENYA.....RESPONDENT**

**RULING**

1. The Petitioner/Applicant filed a Notice of Motion application dated 3<sup>rd</sup> August 2021 seeking orders:-

1) *Spent.*

2) 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 behest of the Respondent from enforcing and or purporting to enforce or implement the Respondent's new academic policy revising the number units per semester from two (2) to three (3) for courses with practical component and from three (3) to four (4) for courses without a practical component pending the hearing and determination of this Application;

3) 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 behest of the Respondent from enforcing and or purporting to enforce or implement the Respondent's new academic policy reducing part-time payments per unit taught by twenty percent (20%) or by any amount, pending the hearing and determination of this Application;

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 behest of the Respondent from enforcing and or purporting to enforce or implement the Respondent's new academic policy revising the number units per semester from two (2) to three (3) 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 behest of the Respondent from enforcing and or purporting to enforce or implement the Respondent's new academic policy reducing part-time payments per unit taught by twenty percent (20%) or 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) units for courses with practical component and three (3) units for 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 units taught by academic staff per semester from two (2) to three (3) units for courses with practical component and from three (3) to four (4) units for courses without a practical component;

8) An Order restraining the Respondent, its servants or agents from implementing any reduction in the pay rate for 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 the grounds that by a circular dated 11<sup>th</sup> March 2021 under reference number MMU/VC/COUNCIL RESOLUTION/VOL.1(131), the Vice Chancellor of the Respondent informed all teaching staff of the Respondent that on 13<sup>th</sup> May 2020 the University Council of the Respondent took into consideration the directive by the Ministry of Education on cost cutting measures and resolved to increase the full/normal teaching workload per semester and to reduce on part-time payments per unit taught by 20%. That the new measures were to take effect from the first Semester of the 2020/2021 academic year and all Chairpersons of Departments of the Respondent were to immediately operationalize the resolution. The Petitioner/Applicant Union asserts that it petitioned the Respondent to withdraw the said circular and proposed that a stakeholders meeting be convened to discuss the emerging issues and the implementation of the Circular appeared to have been put on hold by the Respondent. That however on 5<sup>th</sup> July 2021 through a new Circular referenced MMU/VC/UOCCL/Vol.1(2), the Vice Chancellor sought to set up a Course Loading Oversight Committee whose newly appointed Chairperson sought to enforce the implementation of the new academic workload policy. The Applicant further asserts that it is apprehensive that implementing and enforcing the new unilaterally developed academic workload policy will increase the workload and working hours and lead to loss of income by the academic staff of the Respondent. The Applicant asserts that the Respondent has made the said unilateral decisions without consulting stakeholders at the University like the Petitioner and thus contravening terms and conditions of service, the Recognition Agreement of the parties and labour rights under the Constitution. The Applicant further asserts that the Petitioner/Applicant has a legitimate expectation that the Respondent would contact it before any purported increase in workload, working hours or loss of its members' income could be affected as required under the Employment Act. The Applicant states that if the illegality by the Respondent is allowed to continue, it will occasion continued irreparable losses, damages and prejudice its fundamental rights. The Applicant further asserts that it is therefore in the interest of fair administration of justice and the rule of law that the reliefs sought herein are granted to prevent the continued gross violation which cannot be undone once the workload policy is commenced on a new cohort of students. The motion was supported by the Petitioner/Applicant's Supporting Affidavit sworn on 3<sup>rd</sup> August 2021 by Mr. Onesmus Maluki Mutio the Chapter Secretary of the Petitioner who annexed documents in support of the grounds of the Application. He depones that it is crucial for this Honourable Court to issue the conservatory orders sought against the actions complained of.

3. The Respondent filed a Replying Affidavit sworn on 20<sup>th</sup> August 2021 by its Assistant Legal Officer, Mr. Kagwe Wilson who avers that the Application herein is fatally defective, devoid of merit, vexatious, brought in bad faith and ought to be dismissed. He further depones that the Respondent admits the averments on the content of the initial Circular as pleaded and that the Respondent issued two prior memos inviting officials of the Petitioner/Applicant for consultative meetings. That after the consultative talks, the Vice Chancellor appointed a Course Loading Oversight Committee to implement the University Council's resolutions and that is therefore not true that the Respondent has been denied audience or participation in the same as it has been involved in discussions with the Petitioner/Applicant regarding the subject issue. That the Respondent is still open to more deliberations with the Petitioner/Applicant on the said issue and that dialogue in this matter should be considered as the Respondent is yet to implement the contents of the circular dated 11<sup>th</sup> March 2021. He denies that enforcing the provisions of the circular dated 11<sup>th</sup> March 2021 will in any way increase the workload and working hours or lead to loss of income to the academic staff asserting that what was to be covered by the staff will not change but will be covered in a short period of time.

4. In reply, the Petitioner/Applicant filed a Further Affidavit dated 17<sup>th</sup> September 2021 by Mr. Onesmus Maluki Mutio who avers that the Respondent's admission of the facts made under Paragraphs 3 and 4 of the Supporting Affidavit in effect supports the salient grounds of the Applicant's Application or Petition. He depones that it is noteworthy that the policy in issue was made by the Respondent's University Council on 13<sup>th</sup> May 2021, about one year earlier, and as such no meeting in 2021 can be validly considered as having been conducted as part of stakeholder participation, consultation or engagement. That the Respondent has therefore admitted that such attempts at engagements are being made after the unilateral unfair and unlawful policy decision and that the Applicant maintains that no consultations were held between it and the Respondent during the development of the new academic policy. He further avers that contrary to the assertion that the Respondent is yet to implement the contents of its Circular, the Deputy Vice Chancellor of the Respondent has released a new Memo referenced MMU/DVC AAR&RI/REG.AA/VOL.6 dated 30<sup>th</sup> August 2021, under the subject "Loadings for 2020/2021 and 2021/2022 Academic Year" wherein the Respondent reiterates that the impugned academic policy must be complied with. That the Respondent's renewed attempts to enforce the unilateral policy in August and September 2021 provoked industrial turmoil at the University leading to the closure of the University on 15<sup>th</sup> September 2021.

5. The motion if for denial. The suit would be rendered otiose should the Court delve into the matters in issue substantively in the suit and make the determination the Petitioner/Applicant seeks in the present application. Granted that the suit is yet to be placed for directions, it would be in the interests of justice if the suit is progressed to hearing so as to have a judgment on the merits instead of litigation by instalment which sadly is creeping into labour matters. Motion denied with no order as to costs. Directions on hearing of the suit after this Ruling is delivered.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 13TH DAY OF OCTOBER 2021**

**NZIOKI WA MAKAU**

**JUDGE**