



**Pawa Africa v Cabinet Secretary, Ministry of Education & 3 others (Employment and Labour Relations Petition E130 of 2024) [2025] KEELRC 2820 (KLR) (21 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2820 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS PETITION E130 OF 2024**

**HS WASILWA, J  
OCTOBER 21, 2025**

**BETWEEN**

**PAWA AFRICA ..... PETITIONER**

**AND**

**CABINET SECRETARY, MINISTRY OF EDUCATION ..... 1<sup>ST</sup> RESPONDENT**

**HON. ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**ROMANUS ODHIAMBO ..... 3<sup>RD</sup> RESPONDENT**

**VICTORIA NGUMI ..... 4<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. By an Amended Petition dated 10<sup>th</sup> April 2025, the Petitioner sought orders that:-
  1. The Arbitrary and Unorthodox occupation, reappointment and/ renewal of contracts of the 3<sup>rd</sup> and 4<sup>th</sup> Respondents as Vice Chancellors of Meru University of Science & Technology (MUST) and Jomo Kenyatta University of Agriculture & Technology (JKUAT) respectively for the second term without undergoing a competitive recruitment process in compliance with Section 39 (1) (a) of the Universities Act 2012 be and is hereby declared invalid, null and void ab initio.
  2. The 3<sup>rd</sup> and 4<sup>th</sup> Respondents be and are hereby suspended and/ barred from occupation/ holding of office or undertaking any activity as vice chancellors of Meru University of Science & Technology (MUST) and Jomo Kenyatta University of Agriculture & Technology (JKUAT), respectively, or any other public office.
  3. The instructions issued by the 3<sup>rd</sup> and 4<sup>th</sup> Respondent to withhold funds of the Meru University and JKUAT Alumni Associations, respectively are hereby revoked, and the Alumni Associations through their dully elected officials granted right to recover its dues/ members



contributions from the universities and to participate in all activities and programs of their respective universities/ alma mater in accordance with the Universities Act 2012.

4. The respective Alumni Associations of the said universities be and are hereby granted leave to claim damages and losses and other expenses incurred as a result of delayed disbursement from the 3<sup>rd</sup> and 4<sup>th</sup> Respondents respectively.
5. A declaration be and is hereby made that the word “eligible” in Section 39(3) of the Universities Act 2012 is tied to section 39 (1) (a) and its correct interpretation is that all serving Vice Chancellors, Deputy Vice chancellors, principals and Deputy Principals of Public Universities and colleges may only be Re-appointed for a second term upon and through an open, transparent and Competitive recruitment process in line with section 39 (1) (a) of the Universities Act 2012.
6. All liabilities, appointments, recruitment and benefits acquired or made by the said officers on behalf of the Respective Universities within the invalidly acquired term in office are thus and hereby declared, personal liabilities to the 3<sup>rd</sup> and 4<sup>th</sup> Respondents, and the same expunged from the respective universities’ liabilities/ debt obligations/ burdens automatically.
7. Any and all appointments, re-appointment, renewal of contract, advertisement for recruitment or offer for employment of any Vice Chancellor, Deputy Vice Chancellor, Principal or Deputy Principal of a public university or constituent college done by any other individual/ agency apart from the validly appointed and gazette University Council as established under section 36 of the Universities Act, and/or without adherence to Section 39 (1) (a) of the Act is hereby declared invalid, null and void ab initio.
8. University Management Boards created by the Respondents to usurp powers of the Universities’ Councils, and their decisions to hold/ delay/ disappear students’ academic results, degrees, certificates, delay of graduation for any student on any account and/ or any illegal expulsion/ suspension of students/ staff be and are hereby declared invalid, null and void, and the said degrees, results and certificates be released to their owners un conditionally through the Universities Alumni Association.
9. A declaration is hereby made that the valid organs of public universities in Kenya are as defined under the Universities Act 2012, i.e. -The University Council, University Senate, Alumni Association, Staff Unions and Students Associations Respectively.
10. The 1<sup>st</sup> Respondent do and is hereby ordered to enforce the orders, and confirmation of compliance filed before this honorable court within 30 days, failure to which the Respondents shall individually and collectively be cited for contempt of Court.
11. The Petitioner be and is hereby granted right to oversee enforcement of the orders in line with article 3 (1) of the Constitution, and by virtue of being the petitioner, and to file his report in court within 60 days.
12. Any other relief, order or declaration as the court may deem just to grant.
13. Costs of this Petition be Borne by the 3<sup>rd</sup> and 4<sup>th</sup> Respondents.

### **Petitioner’s Case**

2. The Petitioner avers that it is a Civil Society Organization specializing in Social Economic Development, Social Justice, Human Rights, Democracy, and Good Governance in Kenya.



3. The Petitioner avers that the petition is in public interest challenging the arbitrary and illegal occupation of office by the 3<sup>rd</sup> and 4<sup>th</sup> Respondents as Vice Chancellors of Meru University of Science & Technology (MUST) and Jomo Kenyatta University of Agriculture & Technology (JKUAT) respectively for the second term without undergoing a competitive recruitment process in compliance with Section 39 (1) (a) of the Universities Act. Therefore, it has the requisite locus standi to institute the petition.
4. The Petitioner avers that the 3<sup>rd</sup> and 4<sup>th</sup> Respondents' terms of office came to an end on 27<sup>th</sup> February 2023, and the respective University Councils ordered them to vacate office following expiry of their term, poor performance, impropriety and incompetence to pave the way for a fresh, open, transparent and competitive recruitment.
5. The Petitioner avers that on 7<sup>th</sup> March 2023, the 3<sup>rd</sup> and 4<sup>th</sup> Respondents forcefully and illegally occupied the offices which they occupy to date in the pretense of being under the protection and shadows of political godfatherism at the detriment of the Rule of law, public interest, repute, welfare of students, staff, alumni and stakeholders, and honor bestowed on the offices.
6. It is the Petitioner's case that the 3<sup>rd</sup> and 4<sup>th</sup> Respondents have since authorized the non-remittance of funds of Meru University Alumni Association and JKUAT Alumni Association being alumni fees of Ksh. 1,100 paid by graduants as part of the graduation. This has occasioned damages, losses and injuries to the associations which are duly registered and formed under Section 42 of the Universities Act.
7. The Petitioner avers that the 3<sup>rd</sup> and 4<sup>th</sup> Respondents illegal occupations of the offices has triggered escalated ignorance and erratic contravention of Section 39 (1) (a) by other individuals, who have followed suit and occupied offices as VCs, DVCs, Principals and Deputy Principals of other public universities such as The University of Nairobi, Machakos University, Kenyatta University and 12 others across the country.
8. This has led to a deteriorating state of management, reputational damage, looting of public resources, engaging in programs not aligned with objectives of the institutions and sinking the institutions into debt, which are now at the brink of collapse and closure at the expense of the public, students, alumni, staff and stakeholders.
9. It is the Petitioner's case that vide a judgment by Hon. Justice Onesmus Makau in Petition No. E001 of 2023 in the Employment & Labour Relations Court at Meru, the 3<sup>rd</sup> and 4<sup>th</sup> Respondents have been found to be using the illegally acquired offices to engage in gross violation, breach of the Constitution, entrenched nepotism, breach of procurement laws, impropriety of public funds, abuse of office, gross misconduct and causing dishonor to the offices and the universities.
10. Consequently, the 3<sup>rd</sup> and 4<sup>th</sup> Respondents have caused massive suffering to the universities' staff, students and stakeholders by undermining academic innovation and research programs, opening illegal campuses within and outside the country for self-gain, employing relatives and friends illegally, diverting universities funds to irrelevant projects such as real estate, land buying, rent and lease of assets for individual gain, obtaining debts in the name of the universities for individual interests, interfering with operations of the universities' staff, alumni and students associations, deducting and not remitting statutory and obligatory dues to KRA, NSSF, SHA, banks and SACCOs thus causing penalties and interests, and have further caused breach of 1/3 rule of staff salaries arbitrarily by falsifying payrolls.
11. It is the Petitioner's case that the Respondents' actions have deprived other qualified candidates the right and opportunity to participate and get appointed as Vice Chancellors of the respective universities



- through an open, transparent and competitive recruitment process as per the law, and deprived the universities of an opportunity to get the most competent/ suitable candidates for the said positions.
12. The Petitioner avers that the 3<sup>rd</sup> and 4<sup>th</sup> Respondents used their positions to create other illegal organs of the universities such as the University Management Board which usurped the roles of the Universities Council, and thus amended the Universities Act through the back door for personal and selfish gains at the detriment of public interest, rule of law and good governance.
  13. The Petitioner avers that the 3<sup>rd</sup> and 4<sup>th</sup> Respondents are in breach of Section 39 (1) (a) of the Universities Act and Articles 10 (c), 73 and 75 of the Constitution.
  14. It is the Petitioner's case that the 3<sup>rd</sup> and 4<sup>th</sup> Respondents are accomplices and beneficiaries of an illegality and gross violation of the Constitution and the law thus they should be barred from holding any public office.
  15. The Petitioner avers that it is in the interest of justice, clarity of law and posterity that the court do issue an order and/ or declaration that all officers under section 39 of the Universities Act who after serving their first term wish to serve for a second term must undergo an open, transparent and competitive recruitment process.
  16. It is the Petitioner's case that unless the orders sought are granted, irreparable damage will be caused to the universities, alumni associations, students, staff, public and stakeholders which will include imminent collapse closure of the universities, massive loss of public resources, disrepute, discrimination, continued breach of the law, lack of integrity and dishonor, and further escalation of the illegality to other institutions eroding the principals of the rule of law irredeemably.

#### **1<sup>st</sup> and 2<sup>nd</sup> Respondents' Case**

17. In opposition to the Amended Petition, the Respondents filed a Notice of Preliminary Objection dated 14<sup>th</sup> July 2025 on the following grounds: -
  1. That the Amended Petition is fatally defective for failure to comply with the Constitutional Petition Rules and for want of specificity principle, as pronounced in the case of Anarita Karimi Njeru –versus- the Republic (1976-1980) KLR 1272, reinforced in the case of Mumo Matemu –versus- Trusted Society of Human Rights Alliance & 5 Others (2013) (eKLR).
  2. That the Petitioner has failed to disclose with specificity any cause of action against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, therefore the suit as against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents is devoid of merit.
  3. That there is misjoinder of causes of action and persons by the Petitioner, which renders the pleadings herein incompetent, bad in law and incurably defective.
  4. That the Amended Petition offends the doctrine of exhaustion as the Petitioner ought to have had recourse to, and exhausted the internal dispute resolution mechanisms in the governing organs of the respective Universities, established pursuant to Section 35 of the Universities Act, 2012 before litigating in court.
  5. That the Petition is otherwise incompetent, misconceived, misplaced and is an abuse of the process of this Honourable Court as the Petitioner's constitutional rights have not been breached in any manner as alleged or at all by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.



### 3<sup>rd</sup> Respondent's Case

18. In opposition to the Amended Petition, the 3<sup>rd</sup> Respondent filed a Preliminary Objection dated 20<sup>th</sup> May 2025 on the grounds that: -
1. Firstly, the suit herein was instituted by way of a Plaint dated 30<sup>th</sup> July 2024, which was then purportedly amended through an Amended Petition dated 10<sup>th</sup> April 2025. Both of these pleadings have been filed contrary to the provisions of Rules 10(1) and 34 of the Employment and Labour Relations Court (Procedure) Rules, and therefore ought to be struck out.
  2. There is a misjoinder of causes of action by the Petitioner which renders the pleadings incompetent and thus bad in law and incurably defective. This suit challenges the appointments of the 3<sup>rd</sup> and 4<sup>th</sup> Respondents who were appointed separately to serve in different universities by different University Councils. Allegations of impropriety on the part of the 3<sup>rd</sup> and 4<sup>th</sup> Respondents as Vice Chancellors of two separate institutions cannot apply jointly.
  3. Misjoinder of persons has made it impossible for the 3<sup>rd</sup> Respondent to respond to every alleged claim. The orders sought by the Petitioner, if granted, cannot be implemented by the 3<sup>rd</sup> Respondent, given that the 3<sup>rd</sup> Respondent reports to the Council of Meru University of Science and Technology, which ought to have been joined as a party to this suit.
  4. This Honorable Court lacks the jurisdiction to hear and determine this matter given that any cause of action against the 3<sup>rd</sup> Respondent, must arise in Meru County where the 3<sup>rd</sup> Respondent works for gain, and his employer is headquartered.
  5. The above notwithstanding, the Petitioner has failed to pay the requisite court filing fees to institute this suit, thereby rendering this suit incompetent.
  6. It is in the interests of justice that this objection is dispensed with in the first instance.
19. The 3<sup>rd</sup> Respondent further filed a replying affidavit dated 1<sup>st</sup> July 2025.
20. The 3<sup>rd</sup> Respondent avers that contrary to the Petitioner's allegations, his contract of service for re-appointment was lawfully renewed for a further term of five years under section 39(3) of the *Universities Act*, as read together with section 21 (2)(d) of the Meru University of Science and Technology Charter, 2013 which provides that the Council of the Meru University of Science and Technology shall appoint and determine the terms and conditions of service for all staff of the university.
21. The 3<sup>rd</sup> Respondent avers that clause 13 of his contract of service provides that he could apply for the renewal of his appointment by way of a written request at least six months of the expiry of the said contract.
22. Therefore, eight months before the expiry of his first contract, he applied for a renewal by way of a written request to the Chairman of the Council of Meru University of Science and Technology.
23. It is the 3<sup>rd</sup> Respondent's case that on 14<sup>th</sup> April 2023 the Meru University of Science and Technology Council held a full council meeting to deliberate on his contract and appraisal for purposes of renewal of his contract. The Council deliberated in detail and agreed to recommend the renewal of his contract for a second term and thereafter, he was duly re-appointed for a second term of five years.



24. The 3<sup>rd</sup> Respondent avers that while Section 39(1) of the *Universities Act* provides for competitive recruitment as was done for my first term, does not apply to the renewal of my contract for my second term, as established by the Court of Appeal at Nairobi in *Wilfrida Itolondo & 4 others v President & 7 others* [2015] KECA 74 (KLR) and reaffirmed in *Wilfrida Arnodah Itolondo v Attorney General & 9 others* [2020] KECA 201 (KLR). Therefore, the Petitioner's contention that his re-appointment as Vice Chancellor for a second term was arbitrary is unfounded and devoid of legal basis.
25. The 3<sup>rd</sup> Respondent avers that the Petitioner has not annexed any evidence to support his allegations of non-remittance of funds meant for the Meru University of Science and Technology Alumni Association, thereby limiting my ability to comprehensively respond to such egregious accusations.
26. The 3<sup>rd</sup> Respondent avers that according to section 25(3) and (4) of the Meru University of Science and Technology's Charter, the University's Alumni Association governs the conduct of its proceedings and transmits its resolutions to the Council and Senate of the University.
27. It is the 3<sup>rd</sup> Respondent's case that members of the University's Alumni Association, and each year's graduating class make contributions that fund bursaries to students from financially disadvantaged backgrounds, enabling them to pursue higher education. These bursaries have been granted continuously for over four years now. In addition, their donations currently support an ongoing student walkway project along the main University Road.
28. The 3<sup>rd</sup> Respondent avers that on 16<sup>th</sup> May, 2025, Meru University of Science and Technology's Alumni Association held its 2<sup>nd</sup> Annual General Meeting (AGM) which was attended by over eighty alumni representative delegates. In the AGM, new officials were nominated into office for the next five years, therefore, the Petitioner's allegations regarding the purported withholding of funds of the University's Alumni Association are baseless and devoid of merit.
29. The 3<sup>rd</sup> Respondent denied creating any University Management Board to usurp the powers of the University Council and avers that the University Management Boards are a creature of Section 35 (1) (c) of the *Universities Act* read together with Section 23 of the Charter of Meru University of Science and Technology; and they are mandated with assisting in the day-to-day management of universities among other functions.
30. The 3<sup>rd</sup> Respondent avers that the Petitioner has failed to disclose with reasonable degree of precision the grounds and circumstances that form the basis for his allegations of mismanagement, nepotism, breach of procurement laws, impropriety of university funds, abuse of office, falsifying payroll, non-remittance of staff's statutory deductions, opening illegal campuses for self-gain, harassment of students, and gross misconduct. This violated his right to be granted sufficient details to allow him respond to the allegations pursuant to Article 50 of the *Constitution*.
31. It is the 3<sup>rd</sup> Respondent's case that the Petitioner's claims of impropriety, mismanagement and squandering of Meru University of Science and Technology resources remain mere allegations devoid of any legal or factual foundation and merit.

### **Petitioner's Submissions**

32. The Petitioner submitted on two issues: whether the petition is merited, and whether the Honorable Court may grant the prayers sought in the petition.
33. The Petitioner submitted that the as a result of the 3<sup>rd</sup> and 4<sup>th</sup> Respondents' illegal occupation of the offices, the said positions were neither advertised nor any competitive recruitment done in compliance with Section 39(1)(a) of the *Universities Act*. Consequently, the 3<sup>rd</sup> and 4<sup>th</sup> Respondents' occupation



of the said positions as Vice Chancellors of the said Universities did not meet the legal threshold of competitive and transparent process.

34. The Petitioner submitted that Section 39(1)(a) of the *Universities Act* provides that the Vice Chancellor of a Public University shall be appointed competitively by the Cabinet Secretary on the recommendation of the Council. Additionally, Article 73 of the *Constitution* lays down the responsibilities of leadership as follows:

- “(1) Authority assigned to a state officer—
  - (a) is a public trust to be exercised in a manner that—
    - (i) is consistent with the purposes and objects of this Constitution;
    - (ii) demonstrates respect for the people;
    - (iii) brings honor to the nation and dignity to the office; and
    - (iv) promotes public confidence in the integrity of the office; and
  - (b) vests in the State officer the responsibility to serve the people, rather than the power to rule them.
- (2) The guiding principles of leadership and integrity include—
  - (a) selection on the basis of personal integrity, competence and suitability, or election in free and fair elections;
  - (b) objectivity & impartiality in decision making, and in ensuring that decisions are not influenced by nepotism, favoritism, other improper motives or corrupt practices;
  - (c) selfless service based solely on the public interest, demonstrated by —
    - (i) honesty in the execution of public duties;
    - (ii) the declaration of any personal interest that may conflict with public duties;
  - (d) accountability to the public for decisions and actions; and
  - (e) discipline and commitment in service to the people.”

35. It is the Petitioner’s submission that Section 39(3) of the *Universities Act* does not give the outgoing Vice Chancellors any entitlement to a second term, and that the word “eligible” only gives them an equal opportunity as the other candidates in the recruitment process. Therefore, once the first contract of employment is terminated, they should subject themselves to a fresh recruitment process in line with Section 39(1)(a) of the Act.

36. The Petitioner submitted that the institutions being public universities, the 3<sup>rd</sup> and 4<sup>th</sup> Respondents do not hold any entitlement to the offices as Vice Chancellors, and grant of the prayers sought will not cause any prejudice, loss or injustice and shall only act to meet the ends of justice.



37. It is the Petitioner's submission that the universities are public institutions funded by tax payers' resources, and are among the 1<sup>st</sup> generation public universities in Kenya whose collapse as a result of the act of the 3<sup>rd</sup> and 4<sup>th</sup> Respondents has adverse negative effects on Article 43 of the Constitution.
38. The Petitioner submitted as a result of the illegal acts of the 3<sup>rd</sup> and 4<sup>th</sup> Respondents, has caused the universities massive damages and inability of students to continue with education, negative impact on the 68,000 students, 1,200 staff, 60,000 alumni members, public, government and stakeholders.
39. The Petitioner submitted that the two institutions are faced with reeling debts, liabilities and warrants of attachment as a result of the 3<sup>rd</sup> and 4<sup>th</sup> Respondents' mismanagement, cobbling of public resources, deliberate diversion of funds to personal projects and instilling debts on the institutions for individual personal gains; and unless the prayers are granted, these institutions are likely to suffer irreparable damages and final collapse, closure and termination of services.
40. It is the Petitioner's submission that the continued illegal occupation of office by the 3<sup>rd</sup> and 4<sup>th</sup> Respondents have made the 1<sup>st</sup> and 2<sup>nd</sup> Respondents unable to undertake a credible, open and competitive recruitment of VCs and DVCs in strict adherence with the Universities Act and Constitution.
41. The Petitioner submitted that the affected universities are currently at the verge of collapse due to mismanagement, debts burden, impropriety, missing marks for students and nepotism in staff appointments/ promotion occasioned by the 3<sup>rd</sup> and 4<sup>th</sup> Respondents. Therefore, issuance of the orders sought will cure the impropriety as well as save these institutions from collapse, and enable resuscitation, rejuvenation and full recovery in the interest of the public, students, staff, alumni and stakeholders.
42. The Petitioner relied on *John Mining Temoi & another v Governor of Bungoma County & 17 others* [2014] KEHC 5453 (KLR) wherein the court emphasized that: "In determining whether an appointment, promotion or re-designation has been undertaken in a fair and transparent manner, the overriding factors shall be merit, fair competition and representation of the diversity of the county."

### **1<sup>st</sup> and 2<sup>nd</sup> Respondents' Submissions**

43. The Respondent submitted on three issues: Whether this Honorable Court should strike out the Amended Petition dated 10<sup>th</sup> April, 2025 as against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents; whether the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' Notice of Preliminary Objection has merit; and costs.
44. On the first issue, the Respondents submitted that the petition does not disclose any reasonable cause of action against them, thus, it is devoid of merit. The petition is scandalous, frivolous and vexatious in so far as it discloses no basis for the initiation of the suit against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, to justify the expending of judicial time.
45. The Respondents submitted that Order 2 Rule 15 of the Civil Procedure Rules grants this court the power to strike out this suit as against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents on the ground that it discloses no reasonable cause of action against them.
46. The Respondents placed reliance in *Pevans Est Africa Limited & 4 others v Nation Media Group Limited & 7 others* [2022] KEHC 13928 (KLR) wherein the court held: "Non-disclosure of a reasonable cause of action or defence in law is one of those grounds prescribed by order 2 rule 15 for striking out a suit at any stage of the proceedings. What amounts to 'a reasonable cause of action' in its technical sense was the central theme in *DT Dobbie & Company (Kenya) Ltd* and to this extent that decisions is equally relevant to the present application."



47. On the second issue, the Respondents submitted that the notice of preliminary objection is sustainable as it raises points of law. They relied in the Supreme Court case of *Joho & another v Shahbal & 2 others* [2014] KESC 34 (KLR) where it was held that: “A preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit.”
48. The Respondents submitted that the amended petition is fatally defective for failure to comply with the Constitutional Petition Rules and for want of specificity principle as established in *Anarita Karimi Njeru v Republic* [1979] KECA 12 (KLR) and reinforced in the case of *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others* [2013] KECA 445 (KLR) where the Court held that: “...We would, however, again stress that if a person is seeking redress from the High Court on a matter which involves a reference to the *Constitution*, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed.” The Petitioner has failed to prove his case against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents or to meet the above threshold.
49. The Respondents submitted that the Petitioner has failed to set out with a reasonable degree of precision the provisions infringed by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, and the manner in which they are alleged to be infringed. The Petitioner’s citing of constitutional provisions as well as Section 39 (1) (a) of the *Universities Act* is not sufficient.
50. The Respondents submitted that there is a misjoinder of causes of action and persons by the Petitioner, which renders the pleadings incompetent, bad in law and incurably defective. They relied in *Apex International Ltd and Anglo Leasing and Finance International Finance Ltd –versus-Kenya Anti-Corruption Commission* (2012) eKLR, where the Court quoted the words of Mukhtar J. of the Supreme Court of Nigeria in *Goodwill and Trust Investment Ltd –versus-Will and Bush Ltd* (2011) LCN/B820 (SC) as follows: -“It is trite law that to be competent and have jurisdiction over a matter, proper parties must be identified before the action can succeed, the parties must be shown to be proper parties whom rights and obligations arising from the cause of action attach. The question of proper parties is a very important issue which would affect the jurisdiction of the suit in limine.”
51. It is the Respondents’ submission that suit challenges the appointments of the 3<sup>rd</sup> and 4<sup>th</sup> Respondents who were appointed separately to serve in different universities by different University Councils. Therefore, the Petitioner’s allegations cannot apply jointly as the 3<sup>rd</sup> and 4<sup>th</sup> Respondents reports to different University Councils, that have not been joined as parties to this suit. It is common ground that there is a misjoinder in this suit, thus the preliminary objection should be upheld.
52. The Respondents submitted that the Amended Petition offends the doctrine of exhaustion as the Petitioner ought to have exhausted the internal dispute resolution mechanisms in the governing organs of the respective Universities established pursuant to Section 35 of the *Universities Act* before litigating in court. The Petitioner failed to exhaust the available internal dispute resolution mechanisms within Meru University of Science and Technology (MUST) and Jomo Kenyatta University of Agriculture & Technology (JKUAT) before filing this suit, thus the Amended Petition should be dismissed on this ground.
53. On costs, the Respondents submitted that it is a general principle that costs follow events. They therefore urged the court to exercise its discretion judiciously and further to strike out the Amended Petition with costs to them.



### 3<sup>rd</sup> Respondent's Submissions

54. The 3<sup>rd</sup> Respondent submitted on three issues: whether the Amended Petition. is incompetent and bad in law, and whether this Honourable Court has the jurisdiction to hear and determine the Amended Petition against the 3<sup>rd</sup> Respondent; whether the 3<sup>rd</sup> Respondent's reappointment as Vice Chancellor of Meru University of Science and Technology was arbitrary and unorthodox; and whether the Petitioner's allegations of withholding Alumni Association funds, delay and disappearance of student academic results, mismanagement and abuse of office are merited.
55. On the first issue, the 3<sup>rd</sup> Respondent relied in Owners of the Motor Vessel "Lillian S" versus Caltex (Kenya) Limited 119891 eKLR, wherein it was held that jurisdiction is everything for a court. Without it, a court has no power to make one more step and where a court finds that it has no jurisdiction, it must immediately down its tools and proceed no further.
56. The 3<sup>rd</sup> Respondent submitted that Rule 6 of the Employment and Labour Relations Court (Procedure) Rules, 2024 provides that proceedings before this Honorable Court shall be instituted at the Court's registry or sub-registry with respect to the county where the claimant, petitioner or applicant actually and voluntarily resides or carries on business or personally works for gain; or the cause of action, wholly or in part, arises.
57. The 3<sup>rd</sup> Respondent submitted that Petitioner has not placed any evidence before this court by way of registration documents or financial records, to demonstrate that it carries on business in Nairobi. The Petitioner merely states that it is an organization within the Republic of Kenya. However, it is well established that the 3<sup>rd</sup> Respondent resides and works for gain in Meru County, on account of the physical location of his workplace which is the Meru University of Science and Technology.
58. The 3<sup>rd</sup> Respondent submitted that the alleged dispute concerning his appointment has been lumped together with the alleged dispute concerning the appointment of the Vice Chancellor of Jomo Kenyatta University of Agriculture and Technology located in Kiambu County. Therefore, the Petitioner did not take into account the Respondents' location as well as where the causes of action arose when invoking the territorial jurisdiction of the court.
59. It is the 3<sup>rd</sup> Respondent submission that that any dispute concerning the employment or the renewal of his employment term, ought to be heard by the Employment and Labor Relations Court at Meru.
60. The 3<sup>rd</sup> Respondent submitted that the Petitioner applied for waiver of court filing fees, but the application was not granted, as per the ruling of Hon. Lady Justice Rutto in Miscellaneous Application E357 of 2024: PA WA Africa vs. Cabinet Secretary, Ministry of Education & 3 others (2025) KEELRC 851 (KLR).
61. The 3<sup>rd</sup> Respondent submitted that payment of filing fees is the action that activates the institution of a petition before this court. Without the requisite payment of filing fees to institute this petition, this petition is not properly before this court, and is therefore incompetent and non-existent and ought to be struck out on the grounds of incompetence for failure to pay the requisite filing fees to institute this petition before this court.
62. The 3<sup>rd</sup> Respondent submitted that the suit herein was instituted by way of a Plaint dated 30<sup>th</sup> July 2024, which was then purportedly amended through an Amended Petition dated 10<sup>th</sup> April 2025. The Amended Petition was therefore instituted in blatant disregard of Rules 7(1) and 10(1) of the Employment and Labour Relations Court (Procedure) Rules (2024).



63. The 3<sup>rd</sup> Respondent submitted that the petition challenges the appointments of two different Vice Chancellors of two different universities, with no connection or distinct similarities between the said appointments. In addition, the Petitioner, in its Plaint dated 30<sup>th</sup> July 2024, averred allegations of impropriety on the part of the 3<sup>rd</sup> and 4<sup>th</sup> Respondents as Vice Chancellors of two separate institutions. Therefore, the causes of action raised in this suit, if any, did not arise from the same transaction.
64. It is the 3<sup>rd</sup> Respondent's submission that the misjoinder of causes of action by the Petitioner renders the Amended Petition incurably defective, incompetent and bad in law.
65. On the second issue, the 3<sup>rd</sup> Respondent submitted that the Amended Petition does not challenge his first term appointment as Vice Chancellor of Meru University of Science and Technology. Instead, it challenges his re-appointment on the grounds that the said reappointment was not done competitively as Section 39(3) of the Universities Act provides as follows: "The Vice-Chancellor of a public university shall hold office for a term of five years and shall be eligible for a further term of five years."
66. The 3<sup>rd</sup> Respondent relied in *Wilfrida Arnodah Itolondo v Attorney General & 9 others* [2020] KECA 201 (KLR) wherein the Court of Appeal held: "To begin with the appointment of the 7<sup>th</sup> to 10<sup>th</sup> respondents was done competitively when they were first appointed to serve for a contract term of five (5) years. Having satisfied the criterion under the Constitution when they were appointed in office, we agree with the submissions by counsel that the blood of constitutionalism to which a candidate was subjected to in the initial appointment, was still running through them in the re-appointment. They served for five (5) years and they were eligible for re-appointment, and just as this Court held in Civil Appeal No 120 of 2014, the 7<sup>th</sup> to 10<sup>th</sup> respondents were not being recruited afresh. If they were strangers who were re-appointed without competition, that would have implied abuse of process that violated the Constitution and called for intervention by this Court, which was not the case here."
67. The 3<sup>rd</sup> Respondent submitted that while Section 39(1) of the Universities Act provides for competitive recruitment for a first-term appointment of a Vice-Chancellor, the requirement for competitive recruitment does not apply to the renewal of a Vice-Chancellor's contract for a second term.
68. The 3<sup>rd</sup> Respondent submitted that he has demonstrated that he dutifully followed the procedure in applying for the renewal of his contract for a second term, in accordance with clause 13 of his first term contract. Eight months before the expiry of his first term contract of service, he applied for a renewal of his contract of service by way of a written request to the Chairman of the Council of Meru University of Science and Technology. In his application, he alluded to his satisfactory performance in his first term, as per the contractual requirements for a contract of service renewal. Thereafter, on 14<sup>th</sup> April, 2023 the Meru University of Science and Technology Council held a full Council Meeting to deliberate on his appraisal for purposes of renewal of his contract and agreed to recommend the renewal of his contract for a second term.
69. It is the 3<sup>rd</sup> Respondent's submission that that the Petitioner's allegations that his re-appointment as Vice Chancellor for a second term was arbitrary and unorthodox, is devoid of factual basis and legal merit; as he has satisfactorily demonstrated that his re-appointment satisfied the procedural and substantive requirements as provided for by Section 39(3) of the Universities Act as read together with section 21 (2)(d) of the Meru University of Science and Technology Charter, 2013 and clause 13 of his first term contract of service.



70. On the third issue, the 3<sup>rd</sup> Respondent submitted that the Petitioner the Petitioner is not exempt from the provisions of Section 107 - 109 of the Evidence Act, which provides that
- “ 107     Whoever desires any court to give judgment as to any legal right or liability  
(1).     dependent on the existence of facts which he asserts must prove that those facts  
          exist.
108.     The burden of proof in a suit or proceeding lies on that person who would fail  
          if no evidence at all were given on either side.
109.     The burden of proof as to any particular fact lies on the person who wishes the  
          court to believe in its existence, unless it is provided by any law that the proof  
          of that fact shall lie on any particular person.”
71. It is the 3<sup>rd</sup> Respondent’s submission that the Petitioner has not availed any evidence before this court to lay basis for the allegations levelled against him. Neither this court nor any party to this petition can identify the origin of the Petitioner's claims.
72. It was submitted that the Petitioner’s failure to rely on any evidence leads the 3<sup>rd</sup> Respondent to reasonably believe that the Amended Petition is founded on speculation, for reasons that continue to elude the 3<sup>rd</sup> Respondent.
73. It is the 3<sup>rd</sup> Respondent’s submission that it is evident that there is no supporting evidence for the claims that lay the foundation for the Amended Petition, therefore, this Petition must fail.
74. On the final issue, the 3<sup>rd</sup> Respondent submitted that Rule 7 (1) of the Employment and Labor Relations Court (Procedure) Rules and the principles set out in Anarita Karimi Njeru v Republic [supra] require that a person seeking redress from the High Court on a matter which involves a reference to the Constitution should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed.
75. It is the 3<sup>rd</sup> Respondent’s submission that the Amended Petition has only cited the Constitution with reference to Chapter 6 of the Constitution, which the 3<sup>rd</sup> Respondent has allegedly failed to comply with. However, it fails to specify the provision of Chapter 6 of the Constitution that has been violated, infringed or threatened; provide any particulars as regards the alleged contravention of Chapter 6 of the Constitution; and aver with specificity and particulars on how the 3<sup>rd</sup> Respondent has violated any specific provision of the Constitution or the Employment Act. Therefore, the Petition is incompetent and bad in law, for failure to meet the threshold for Constitutional Petitions, and should therefore fail.
76. I have examined all the averments and submissions of the parties herein. This court directed this petition to proceed by way of written submissions. From the proceedings however, I note that the respondents and especially the 4<sup>th</sup> respondents did not participate in the proceedings. By 2/4/2025 the said 4<sup>th</sup> respondent had not been served.
77. The 1<sup>st</sup> and 2<sup>nd</sup> respondents filed preliminary objections in regard to the petition. Their main contention is that there is misjoinder of parties in this petition wherein the 3<sup>rd</sup> and 4<sup>th</sup> respondents work for two different universities yet the said universities have not been joined in the petition.
78. As submitted by the 1<sup>st</sup> and 2<sup>nd</sup> respondent herein, the averments by the petitioner as to whether the occupation of the office by the 3<sup>rd</sup> and 4<sup>th</sup> respondents is proper or not can only be answered by the respective University Councils who are not parties to this petition. The 3<sup>rd</sup> respondent responded that due to the misjoinder, he is unable to respond on behalf of other institutions.



79. A look at the proceedings herein show that the petitioner has averred that there are breaches by and against various entities being the Meru University of Science and technology (MUST), Jomo Kenyatta University of Agriculture and Technology of (JKUAT), Alumni Association of the said Universities. All these are not party to this petition and their answer to the allegations against them would have been necessary to aid this court reach a just and valid position.
80. In view of these shortfalls in the way the pleadings have been crafted and without the relevant parties being part of this petition, proceeding to determine this petition becomes an uphill task. The only alternative therefore is to strike out this petition, which I proceed to do. There shall be no order of costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 21<sup>ST</sup> DAY OF OCTOBER 2025.**

**HELLEN WASILWA**

**JUDGE**

