



Kenya Union of Domestic, Hotels, Educational Institutions Hospitals and Allied Workers (KUDHEIHA) v University of Nairobi & 2 others (Cause E790 of 2022) [2024] KEELRC 1918 (KLR) (25 July 2024) (Judgment)

Neutral citation: [2024] KEELRC 1918 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E790 OF 2022**

L NDOLO, J

JULY 25, 2024

BETWEEN

KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTIONS HOSPITALS AND ALLIED WORKERS (KUDHEIHA) CLAIMANT

AND

THE UNIVERSITY OF NAIROBI 1ST RESPONDENT

THE UNIVERSITY OF NAIROBI COUNCIL 2ND RESPONDENT

VICE CHANCELLOR 3RD RESPONDENT

JUDGMENT

1. By its Memorandum of Claim dated 14th October 2022, the Claimant seeks the following remedies:
 - a. A declaration on the interpretation of Clause 40 (on gratuity payment) and clause 36 (on uniform compensation) of the Collective Bargaining Agreement (CBA) for 2013-2017;
 - b. A declaration that the Respondents are in contravention of Clauses 40 and 36 of the CBA;
 - c. An order directing the Respondents to pay its employees service gratuity at the standard applicable rate of 31%;
 - d. An order directing the Respondents to compensate all its employees who did not receive uniforms;
 - e. An order directing the Respondents to issue uniforms to its employees in accordance with the provisions of the CBA;
 - f. An order directing the Respondents to fully implement the CBA;



- g. Costs plus interest.
2. The Respondents defence to the Claimant's claim is contained in a Memorandum of Response dated 19th December 2022.
3. By the time the parties appeared before me for directions on disposal of this claim, I had already determined the issue of gratuity in Cause No E722 of 2022. It was therefore agreed that the parties would file submissions on the sole issue of uniforms. This judgment is therefore confined to the issue of uniforms only.

The Claimant's Claim

4. The Claimant states that the CBA for 2013-2017 continued to subsist beyond the stated period as long as no other CBA had been negotiated, concluded and registered. The Claimant further states that the provisions of the CBA for 2013-2017 supersede those of any other previous CBA.
5. The Claimant accuses the Respondents of failing to comply with the CBA by providing uniforms to the employees or compensating them in lieu.

The Respondents' Case

6. In their Memorandum of Response dated 19th December 2022, the Respondents state that the Claimant's claim for uniforms and other common user items is not justifiable.
7. The Respondents accuse the Claimant's members of pursuing an unjust enrichment by asking for monetary compensation on account of unissued uniforms and other common user items.

Findings and Determination

8. The single issue for determination in this claim is whether the Claimant's members are entitled to monetary compensation on account of unissued uniforms and other common user items. The claim is premised on clause 36(d) of the CBA which provides as follows:
 - (d) Where uniforms are not issued every year for any reason by the end of February of the Financial Year in which they are due, the Union and the Employer shall meet to discuss the issue in the subsequent month and if they do not reach agreement and uniforms are not issued by December of the subsequent Financial Year, the Employer undertakes to compensate the employees concerned at the agreed market rate for uniforms not issued for the year.
9. The Respondents submit that uniforms and other common user items issued to the Claimant's members are meant to aid and facilitate the employees to perform their duties and therefore remain the property of the employer. The Respondents therefore maintain that these items cannot be the basis of monetary compensation to the employees.
10. On its part, the Claimant submits that by concurrence of the parties as documented in the CBA, employees who did not receive uniforms were entitled to monetary compensation based on the prevailing market rate. The Claimant goes further to ask the Court to establish a formula for determining the level of compensation to the affected employees.
11. I agree with the Respondents that uniforms are issued to employees as a tool of trade and are to that extent, the property of the employer. It is however evident that the parties had agreed in their CBA that an employee could be reimbursed for uniforms purchased by the employee in the event of failure by the employer to issue the uniform.



12. By definition, reimbursement connotes an actual expenditure incurred by the party claiming reimbursement. This issue was considered by Ongaya J in *John Otieno Nyamwa & 66 others v University of Nairobi* [2018] eKLR where he stated as follows:

“The claimants prayed for refund of costs or expenses incurred in buying uniforms they used on daily basis and it was alleged that the respondent had failed to refund. However, the claimants did not file evidence of purchasing the uniforms, or using such uniforms on daily basis as was alleged and more important, no receipts were filed to show the cost or price of the alleged uniforms. The prayer will fail as it was not justified and it was not established by way of necessary evidence.”

13. In this case, the Claimant did not plead any specific figures as reimbursement claims on behalf of its members nor did it avail any documentary evidence to support the claims. The Court therefore has no basis upon which to grant the prayers sought.

14. The result is that the Claimant’s entire claim fails and is dismissed with an order that each party will bear their own costs.

15. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 25TH DAY JULY 2024

LINNET NDOLO

JUDGE

Appearance

Ms. Omondi for the Claimant

Ms. Nyaga for the Respondent

