



**Kenya Union of Domestic Workers, Hotels, Educational Institutions,  
Hospitals and Allied Workers (KUDHEIHA) v United Kenya Club (Cause  
425 of 2019) [2025] KEELRC 1268 (KLR) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1268 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 425 OF 2019  
BOM MANANI, J  
APRIL 30, 2025**

**BETWEEN**

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

**AND**

**UNITED KENYA CLUB ..... RESPONDENT**

**RULING**

**Background**

1. The court delivered judgment in this cause on 11<sup>th</sup> April 2024 dismissing the Claimant’s suit for being defective and for lack of merit. The reasons for the decision are set out in the body of the judgment.
2. First, the court observed that the person who signed the pleadings which instituted the suit did not disclose the capacity in which he signed them in contravention of section 73 of the *Labour Relations Act*. Section 73(3) of the Act provides as follows:-

“A trade dispute may only be referred to the Employment and Labour Relations Court by the authorized representative of an employer, group of employers, employers’ organization or trade union.”
3. On the other hand, section 2 of the Act defines the term “authorized representative” to mean:-
  - a. the general secretary of a trade union;
  - b. an employer or the chief executive officer of an employer;
  - c. the secretary of a group of employers;



- d. the chief executive or association secretary of an employers' organization; or
  - e. any person appointed in writing by an authorized representative to perform the functions of the authorized representative;
4. Proceeding on this premise, the court observed that pleadings instituting a claim on behalf of a Trade Union must be signed by either the Trade Union's General Secretary or a person who is appointed in writing by the General Secretary of the Trade Union. The court further expressed the view that any person who signs pleadings on behalf of a Trade Union must disclose in the pleadings whether he signed the pleadings in the capacity of the Trade Union's General Secretary or in the capacity of an appointee of the General Secretary. And where the individual signs the pleadings as an appointee of the General Secretary, he must exhibit the authority granted to him by the General Secretary in writing by annexing it (the authority) to the pleadings in question.
  5. The court noted that Mr. Tonge Yoya who signed the Memorandum of Claim did not disclose in what capacity he did so. He neither claimed to be the Claimant's General Secretary nor claimed to be an appointee of the General Secretary with authority to sign the Memorandum of Claim.
  6. For the foregoing reason, the court found that the suit was defective for want of proof of proper execution of the pleadings through which it was instituted. On inter alia, this ground, the court proceeded to dismiss the suit.
  7. The court further observed that although the 3<sup>rd</sup> Grievant had claimed gratuity on the basis of the Collective Bargaining Agreement between the parties, there was evidence that the Respondent had paid him Ksh. 1,329,544.00 as pension. As such, the court arrived at the conclusion that to compel the Respondent to pay the claim for service gratuity under the Collective Bargaining Agreement would offend the principle against double compensation. Consequently, the court declined the claim.
  8. Aggrieved by this decision, the Claimant has filed the application dated 17<sup>th</sup> July 2024 seeking to review it (the decision). The Claimant contends that the effect of the judgment is to nullify certain clauses in the Collective Bargaining Agreement between the parties.
  9. The Claimant contends that the said Collective Bargaining Agreement is binding on the parties. As such, the Respondent is obligated to pay the service gratuity provided for under it whether or not it (the Respondent) had paid the Grievant a pension.
  10. The Claimant avers that the pension which the Grievant received was pursuant to the Pension Trust Deed that was in place at the time. To anchor this argument, the Claimant, for the first time, seeks to introduce in evidence the Pension Trust Deed dated 20<sup>th</sup> August 2013. The Claimant further and for the first time, seeks to place on the court file documents in respect of other individuals (Joseph Wambugu and and Moses Kamande Ngugi) to demonstrate that employees who resign are normally paid both the service gratuity under the Collective Bargaining Agreement and pension under the Pension Trust Deed. These documents had not been produced in evidence during the main trial.
  11. The Respondent has opposed the application through a replying affidavit sworn by one Nancy Nanjala Wanyonyi dated 27<sup>th</sup> August 2024. The Respondent contends that the Claimant has not specified what part of the judgement it desires to be reviewed. The Respondent further contends that the Claimant's suit was dismissed for, inter alia, being defective for failure of an authorized representative to execute the Memorandum of Claim.



## Analysis

12. The grounds upon which a decision of the court may be reviewed are set out under rule 33 of the Employment and Labour Relations Court (Procedure) Rules, 2016. These are:-
  - a. if there is discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the person seeking review or could not be produced by that person at the time when the decree was passed or the order made;
  - b. on account of some mistake or error apparent on the face of the record;
  - c. if the judgment or ruling requires clarification; or
  - d. for any other sufficient reason.
13. A perusal of the application before court suggests that the Claimant relies on all the four grounds. As such, it is necessary to scrutinize whether the motion satisfies any of the four grounds.
14. The Claimant has not demonstrated that it has discovered new and important matters which could not have been placed before the court during trial despite the exercise of due diligence. The Pension Trust Deed and correspondence with third parties which it (the Claimant) seeks to produce in evidence to anchor its request to review the court decision have not been shown not to have been within its (the Claimant's) knowledge and power to produce at the time the matter proceeded to trial. As such, the court declines to accept the documents at the post judgment stage.
15. The Claimant does not contend that there is an error on the face of the judgment which it seeks to correct. Neither does it (the Claimant) contend that the impugned judgment requires clarification. The application and affidavit in support of it do not speak to these grounds. As such, the court cannot determine the motion on the basis of these grounds.
16. The court does not think that there is sufficient reason to review the judgment. It is noteworthy that one of the reasons why the suit was dismissed is that the pleadings instituting the action were defective for want of demonstration that they were executed by the authorized representative of the Claimant. The failure to comply with this requirement was fatal to the suit. As such, an application for review cannot remedy this fatal defect. The consequence is that there is no justifiable reason to consider reviewing the impugned decision.
17. As is apparent from the judgment, the court dismissed the suit for want of compliance with section 73 of the *Labour Relations Act* and for want of merit. The court observed that the claim by the 3<sup>rd</sup> Grievant could not have been granted even if the suit had been legitimately filed because it would have offended the principle against double compensation.
18. The Claimant appears to challenge the court's aforesaid reasoning through the instant application for review. As such, the matters he raises would be best addressed through an appeal. In effect, the Claimant is asking the court to sit on appeal on its decision. This is impermissible (*Peony Management Company Limited v Oyatsi* (Environment & Land Case 79 of 2020) [2024] KEELC 6460 (KLR) (3 October 2024) (Ruling)).

## Determination

19. The upshot is that the application for review lacks merit.
20. As such, it is dismissed with costs to the Respondent.



**DATED, SIGNED AND DELIVERED ON THE 30<sup>TH</sup> DAY OF APRIL, 2025**

**B. O. M. MANANI**

**JUDGE**

In the presence of:

..... for the Claimant/Applicant

.....for the Respondent

**ORDER**

In light of the directions issued on 12<sup>th</sup> July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

**B. O. M MANANI**

