



University of Nairobi v Wambui & 42 others (Employment and Labour Relations Appeal E194 of 2023) [2025] KEELRC 2227 (KLR) (23 July 2025) (Judgment)

Neutral citation: [2025] KEELRC 2227 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS APPEAL E194 OF 2023**

DKN MARETE, J

JULY 23, 2025

BETWEEN

UNIVERSITY OF NAIROBI APPELLANT

AND

REBECCA WAMBUI & 42 OTHERS RESPONDENT

JUDGMENT

1. This appeal arises from the ruling of the trial court delivered on 8th September 2023 in CMCC ELRC No. 1013 of 2022, where the Appellant’s application for consolidation of 42 suits was dismissed. The Appellant, being aggrieved by this decision filed the present appeal on six (6) grounds, primarily challenging the trial court’s refusal to consolidate the suits and its alleged misapprehension of the issues in dispute.
2. The Respondents oppose the appeal, contending that consolidation would prejudice their individual claims and that the trial court’s decision was sound in law and fact. Both parties have filed detailed submissions dated 11th November, 2024 and 13th November, 2024 respectively which have been carefully considered alongside the record of appeal.
3. The dispute arises from the interpretation of Clause 40(h) of the 2013-2017 Collective Bargaining Agreement (CBA) between the Appellant and the Kenya Union of Domestic, Hotels, Educational Institutions, and Hospital Workers (KUDHEIHA). The clause provides thus;

“Unless otherwise stated herein the gratuity payable under this agreement shall be at the rate of 31% of the basic salary for every completed year of service.”
4. The Respondents, all been employees or former employees of the Appellant allege underpayment of gratuity. They argue that the 31% rate should apply retrospectively from their respective dates of



employment, some dating back to the 1980s rather than from the CBA's effective date of 1st July 2013. The Appellant disputes this, asserting that the CBA's terms are prospective.

5. The Appellant sought consolidation of the 42 suits, arguing that they raise identical questions of law and fact. The trial court dismissed the application, holding that the suits involved distinct issues and that consolidation would prejudice the Respondents. Their Memorandum of Appeal raises six (6) grounds condensed into three key issues;
 1. Whether the trial court erred in dismissing the application for consolidation.
 2. Whether the trial court misapprehended the issues in dispute.
 3. Whether the trial court failed to consider the joinder of KUDHEIHA.
6. The 1st issue for determination is whether the trial court erred in dismissing the application for consolidation. The 42 suits all hinge on the interpretation of Clause 40(h) of the CBA. The Appellant seeks to rely on authority of *David Ojwang Okebe & 11 Others v South Nyanza Sugar Company Limited* [2009] eKLR where the Court of Appeal emphasized that consolidation saves costs and time by avoiding multiplicity of proceedings. The Appellant argued that conflicting judgments on the same issue like was in the authority of *ELRC v Employment and Labour Relations Court Appeal No. E015 of 2021 v ELRC v Employment and Labour Relations Court Appeal No. E014 of 2021* demonstrates the need for consolidation to ensure judicial coherence.
7. On the issue of misapprehension of issues by the trial court, the Appellant submits that the trial court erroneously concluded that the suits involved termination or retirement disputes whereas the sole issue is gratuity computation. The Appellant submitted that the court failed to identify any suit where termination was pleaded. The Appellant sought to rely on the authority of *Nyati Security Guards & Services Ltd v Municipal Council of Mombasa* where Justice Maraga (as he then was) outlined the principles for consolidation, including common questions of law or fact.
8. It was also the Appellant's submission for the joinder of KUDHEIHA, as the union that negotiated the CBA is necessary party. The Appellant cited *T.S.S Transporters Ltd v Pamela Akinyi Lidambiza* [2018] eKLR where the court held that parties affected by a decision should be joined.
9. The Respondents' on the other hand defended the trial court's ruling on grounds that the following grounds the suits involve varied circumstances like retirement, promotion, and termination making consolidation impractical. The Respondents relied on the authority of *World Explorers Safaris Ltd v Cosmopolitan Travel Ltd* [2021] eKLR which emphasized that parties are bound by their pleadings. This is in addition to that of *The University of Nairobi v Kenya Union of Domestic Hotels Educational Institutions and Hospital Workers & 2 Others* ELRC No. Cause No. E722 of 2022 the court observed that courts cannot mop up all gratuity cases in a guillotine fashion.
10. The Respondents' further submit a case of prejudice to individual claims in the event of consolidation. They argue that consolidation would force the Respondents to litigate issues they did not plead. For instance, Rebecca Wambui, a retiree, cannot testify on behalf of employees terminated for misconduct. They submit and posit that the Appellant's motive is to save legal costs at their expense contrary to the principles of a fair trial under Article 50 of the *Constitution*.
11. Lastly, the Respondent's discount the joinder of KUDHEIHA as this was not served or heard in the lower courts. The Respondents cited the maxim *audi alteram partem*, asserting that a party cannot be condemned unheard.



12. The primal issue at hand is whether the 42 suits share common questions of law or fact to justify consolidation. Order 11, Rule 3(1)(h) of the [Civil Procedure Rules](#) provides that;

“The court may order consolidation where two or more suits pending in the same court involve common questions of law or fact.”
13. The Appellant correctly identified that all suits revolve around the interpretation of Clause 40(h) of the CBA. However, as held in the authority of [Joseph Okoyo v Edwin Dickson Wasunna](#) [2014] eKLR, consolidation is only appropriate where the common issues are of such importance that simultaneous disposal is desirable.
14. Here, while the interpretation of Clause 40(h) is a common thread. The Respondents’ claims arise from disparate employment events (retirement, promotion, termination). As observed in [ELRC Cause No. E722 of 2022](#), supra, each case has its own litigation cycle, and blanket consolidation risks undermining individualized justice.
15. Consolidation must of necessity be adopted in matters that level on the same grain in terms of facts and the law. This is not the circumstance in this case as we find differentiated issues involving different parties in the conflict. It is not a suitable case for consolidation as this would cause confusion and ebb out injustice to the respective cases of the parties. It is simply not material for consolidation. The trial court’s finding that the suits involve distinct issues was not erroneous. The Appellant’s reliance on the authority of [David Ojwang Okebe & 11 others v SouthNyanza Sugar Company Limited & 2 others](#) [2009] eKLR is distinguishable as the suits in that case arose from a single transaction, a road accident.
16. On misapprehension of issues, the Appellant alleges that the trial court misconstrued the suits as involving termination disputes. A review of the record shows that while some Respondents exited employment via termination, their claims focus on gratuity underpayment, not the manner of exit. However, the trial court’s broader point that the suits are factually diverse, remains valid. For example, a retiree’s gratuity claim under Clause 40(h) may differ from that of an employee promoted to a pensionable grade. The trial court did not err in refusing to consolidate such disparate claims.
17. The Appellant’s prayer to join KUDHEIHA was not considered by the trial court. While KUDHEIHA negotiated the CBA, its joinder at this stage would serve little purpose as the dispute centers on individual entitlements, not the CBA’s validity. Moreover, as the Respondents noted that KUDHEIHA was not served in the lower court. Joinder without notice would violate Article 50(1) of the [Constitution](#).
18. The trial court’s decision to dismiss the consolidation application was justified. The suits, while sharing a common legal question are factually distinct and consolidation would prejudice the Respondents’ right to individualized adjudication.
19. I am therefore inclined to dismiss the appeal with orders that each party bears their costs of the appeal.

DELIVERED, DATED AND SIGNED THIS 23RD DAY OF JULY 2025.

D. K. NJAGI MARETE

JUDGE

Appearances:

Miss Nyaga instructed by Cs. Fredick Collins Omondi Advocates for the Appellant.

Mr Nyabena instructed by Nyabena & Company Advocates for the 27th Respondent.



Miss Achila holding brief for Onenga instructed by Omongo Gatune & Company Advocates for the other Respondents.

