



**Kenya Union of Domestic, Hotels, Educational Institutions and  
Hospital Workers (KUDHEIHA) v Taita Taveta University (Cause  
E008 of 2023) [2024] KEELRC 1477 (KLR) (20 March 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1477 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE E008 OF 2023  
M MBARŪ, J  
MARCH 20, 2024**

**BETWEEN**  
**KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTIONS  
AND HOSPITAL WORKERS (KUDHEIHA) ..... CLAIMANT**  
**AND**  
**TAITA TAVETA UNIVERSITY ..... RESPONDENT**

**JUDGMENT**

1. The claimant is a registered trade union representing workers in domestic, hotel, educational institutions, and hospital sectors. The respondent is a public educational institution registered under the *Universities Act*.
2. The issue in dispute is the alleged refusal by the respondent to issue workers with uniforms and safety protection gear and tools as provided for in the collective agreement (CBA) between the parties.
3. The parties negotiated a CBA and clause 27.0 on the work environment, and the respondent committed to ensuring the safety, health, and welfare of all persons at work in keeping with the law. Under the clause, the respondent committed to providing uniforms for various categories of employees. The type and style were to be decided by the respondent taking into account local conditions and discussions with the shop steward and works committee. Further, the parties agreed that where the uniforms were not issued to the employees for any reason by February each financial year when due, the employer was to meet with the claimant for an agreement. If the uniforms were not issued by December of the following financial year, the respondent committed to pay the employees for uniforms not issued for the year at present value.

4. The shop stewards from the year 2017 wrote to the respondent to issue uniforms in vain. The claimant was informed and engaged the respondent in vain. A report to the Minister was done for conciliation without agreement. The respondent has since refused to adhere to the CBA.
5. The respondent, through a letter dated 18 June 2021 informed the claimant that they were in the process of issuing uniforms. A meeting was held on 7 September 2021 on the matter. The respondent refused to compensate the employees for failure to issue uniforms.

The claimant is seeking orders that;

- a. The respondent is compelled to provide for uniforms and protective gear that are due for the current year.
  - b. The respondent be instructed to compensate workers as described in the CAN for years they have not been provided with uniforms and protective gear.
  - c. The respondent be compelled to adhere to the registered CBA and implement it fully.
  - d. The costs and interests be awarded.
6. In evidence, the claimant called Wayne Mwamburi Muganga an employee of the respondent and member of the claimant who was elected as workers' representative and shop steward to represent all unionized employees of the respondent.
  7. Mwamburi testified that the claim by the claimant on behalf of the grievants is for the provision of uniforms and safety protective gear for the period of 2017 to June 2022. The claim is based on the CBA between the parties for the year 2012/2013 where clause 27(b) provides for payment of uniforms when not issued by the respondent. The respondent has since issued notice for negotiations for subsequent CBA from 2022/2023 but has not compensated the employees for the subject claim period in this suit, that is, 2017 to June 2022. The CBA requires that the employees be compensated for uniforms and protective gear not issued at current value.
  8. Mwamburi also testified that the respondent has about 25 to 35 casual employees. The parties have a Recognition Agreement that defines the sector to be covered from Grade 1 to 4 and the casuals employed by the respondent are represented by the claimant. Clause 27(a) of the CBA covers all employees who require uniforms and protective gear while at work. The CBA refers to all workers and not casual workers. When the claim herein was filed, the parties were engaged in negotiations, and several meetings were held. The question of issuance of uniforms and protective gear has not been resolved for 2017/2022 the subject of this suit.
  9. Mwamburi testified that the respondent has filed receipts for the provision of gloves, and uniforms to several employees but this was only to some departments and for some given items only. The response that the respondent is having financial problems and cannot issue uniforms is without evidence.
  10. In response, the respondent's case is that it complied with its statutory and policy requirements relating to all its employees. The delay in the provision of uniforms to qualified employees in grades 1 to 4 as provided under the CBA has been caused by budgetary constraints wholly attributed to government capitation and nuanced procurement challenges which are extraneous. This has been fast-tracked.
  11. The claimant lacks locus standi to include casual workers in its list of affected employees. Casuals by dint of Clause 2(a) of the CBA are not included.
  12. The claim is filed in abuse of court process as the parties are currently subject to ongoing negotiations and the process has not been exhausted as required under Sections 58,65 and 73 of the [Labour Relations](#)

Act. The claimant has moved the court on a similar matter that was subject to conciliation where the claimant was directed to state whether there is a Recognition Agreement to include casual employees. A Certificate of Disagreement has not been issued. The claimant must exhaust all remedies before invoking the judicial route.

13. The court lacks jurisdiction herein as the subject matter is under ongoing negotiations. The claimant has failed to exhaust conciliation provisions under the LRA. The subject CBA is inapplicable to casual employees and hence the claimant has no locus standi to file this claim. The claim should be dismissed with costs.
14. In evidence, the respondent called Chrisantos Odhiambo Ogony the head of human resources at the material time who testified that on 26 January 2023, the claimant issued a letter seeking a meeting for negotiations. While the respondent accepted the meeting as proposed, they were shocked to be served with summons herein, filed pending the meeting and negotiations. The claimant rushed to court before allowing for the joint meetings to be concluded over the issues herein.
15. The respondent as a public university duly complied with its statutory and policy requirements relating to the provision of uniforms and protective gear to its qualified employees in grades 1 to 4 and members of the claimant. The CBA does not cover casual employees included in the list by the claimant. Due to capitation and mandatory procurement processes, the respondent has not been able to address clause 27 of the CBA. The claimant too has gone ahead to include non-qualified persons in its claim.
16. Ogony testified that the provision of uniforms is a continuous process. In January 2024 parties held a meeting and deliberated on how to address the issue of providing employees with uniforms and other protective gear. The proposal is not to provide uniforms but to give the employees an allowance annually to purchase their uniforms. The management of the respondent has committed to the process of negotiations with the claimant including the shop steward and this claim was filed pending negotiations. The matter has been reported to the Conciliator and is pending. The same questions were under conciliation and relating to the provision of uniforms and night transport for staff. Two years ago, the respondent put in place a programme for night transport and this matter was resolved. All other employees have their uniforms. The inclusion of casuals into the list submitted by the claimant denies the claimant proper standing to urge their case in this claim.
17. Ogony testified that the parties should be allowed to conclude ongoing negotiations and have the claim dismissed as it is an abuse of the court process.
18. Upon cross-examination, the witness testified that the claimant's claim relates to the period of 2017 to 2022. The listed items for uniforms and protective gear are related to the period from 2017 to 2022, 2020 and 2023. The letter of demand by the claimant does not include the provision of uniforms for the year 2023.
19. Clause 17 of the CA relates to the workplace environment and the respondent is required to provide staff with safety gear equipment and uniforms while at work. The provision of uniforms is to be agreed upon by the employer and the union with consultations with the works committee and shop stewards. The shared lists of employees indicate in the year 2020, the respondent paid for shoes for some employees. The employees who were not addressed were not compensated. In February 2020 some employees picked shoes and those not allocated were not compensated.

### **Determination**

20. It is not in dispute that parties have a CBA. Currently, there are ongoing negotiations for a new CBA.

21. For the claimant to enjoy CBA negotiations with the respondent, the founding document is the Recognition Agreement in accordance with Sections 54 and 57 of the Labour Relations Act, 2007 (the LRA). A CBA registered with the court is prima facie evidence of recognition of the claimant by the respondent.
22. Does the claimant have locus standi to represent casual employees in the service of the respondent? The respondent challenged the standing of the claimant in these proceedings on the grounds that under the Recognition Agreement, the claimant is only required to cover employees under Grades 1 to 4 which do not include casual employees. The respondent as the employer must keep work records. Who are these casual employees as against claimant's members?
23. The schedules to the CBA outline the wages, allowances, and benefits due to claimant members in the categories of Grades 1 to 4. Where there is inclusion of any grievant outside such domain, the duty was on the respondent to address. The claimant serves the respondent with its schedules, save to urge the court that there is no locus standi, the same is left empty.
24. The issue that the claimant failed to exhaust dispute resolution mechanisms before moving to court also arose. Whereas the claimant reported a dispute to the Minister on the failure of the respondent to issue its members with uniforms and other protective gear and tools, the matter was not resolved. This is related to claims for the period of 2017 to 2022. As correctly submitted by the respondent and the evidence by My Omony, currently parties are at an advanced stage in negotiating the CBA terms and there is progress.
25. However, CBAs go in phases. The phase of 2017/2020 and 2020/2022. Each carries rights and benefits for the subject employees. ongoing negotiations for CBA 2023 onwards cannot be applied by the employer to negate secured rights and benefits in previous CBAs. That is how the aspect of payment of wage arrears arises. The report of the dispute to the Minister is not a bar to the claimant moving the court for good cause. Its members should not be victimized for using the court system to secure their rights as negotiated under various CBAs over the years. Such CBA allows for a conducive work environment.
26. The claimant has proper standing before this court and has the right to file this claim as herein done.
27. Clause 27 of the CBA effective from 1<sup>st</sup> July 2012, parties agreed that the respondent as the employer would provide safety, health, and welfare of all persons at work in keeping with the provisions of the law. All persons at work for the respondent including the lowest to the most senior. Where there are casual employees on the shop floor of the respondent, the parties agreed to secure their rights and cover them with regard to the work environment. This is good practice.
28. Under these provisions, the employer was to provide the employees with two pairs of uniforms. The type and style were to be decided by the employer taking into account local conditions after discussing with the shop steward and works committee. The parties also agreed that;
  - a) The employer shall maintain such uniforms (laundry and normal repair) but the loss of wilful damages by the employee shall be surcharged to the employee for replacement or repair as the case may be.
  - b) Where the uniforms are not issued for any reason by the end of February of the Financial year in which they are due, the employer and the Union shall meet to discuss the issue in the subsequent month and if they do not reach an agreement and uniforms are not issued by December of the subsequent Financial year, the employer undertakes to compensate the employees for uniforms not issued for the year, at the present value of the uniforms.

- 29. These provisions are highlighted for two reasons. First, whereas parties are allowed to enforce a CBA once registered with the court in accordance with Section 59(5) of the LRA, the terms to be enforced must be clear and unambiguous. Secondly, upon the parties registering the subject CBA, a list of items forming part of every clause ought and should be assigned, cost, and attached to the CBA to form part of the identifiable schedules.
- 30. The claimant has attached a list of its members claiming for the following;
  - a) Overall;
  - b) Safety boots;
  - c) Hand gloves;
  - d) Helmet;
  - e) Googles;
  - f) Bar soap.
- 31. This schedule is not part of the CBA. Even in a case where it was or is extracted from the CBA terms and conditions, these items were not assigned costs.
- 32. This is a matter parties can take into account while negotiating the next CBA. Evidence by the respondent's witness that ongoing negotiations have progressed with a proposal to pay an annual allowance to every employee to purchase their uniform, the basis of Clause 27 is for the employer to maintain type and style. How this is achieved, parties can agree during negotiations.
- 33. Further, the claimant failed to address the question as to whether there were any of its members who were forced to purchase uniforms, protective gear, or safety equipment after the respondent failed to provide them. The cost of such item(s) or any receipts to demonstrate the present value of the uniforms.
- 34. Hence, a CBA is not just a document shared between parties. Before execution, each clause, sentence, and overall must be rationalized as to what it portends.
- 35. On the prayers sought, the respondent must provide its employees with uniforms and protective gear. However, without the claimant setting out what compensatory amounts are due, this claim is without merit. As much as the respondent has a legal duty to adhere to the CBA registered with the court, it is obvious to the court that clause 27 is left ambiguous and without a schedule with costing for the uniforms and protective gear to be provided to the employees.
- 36. Accordingly, the claim herein is declined and will not be awarded as claimed. Parties are engaged in ongoing negotiations and can factor the judgment herein. For industrial peace, each party to bear its costs.

**DELIVERED IN OPEN COURT AT MOMBASA THIS 20 DAY OF MARCH 2024.**

**M. MBARŪ**

**JUDGE**

**In the presence of:**

**Court Assistant: Japhet**

..... **and** .....