



University of Nairobi v Kenya Union Of Domestic, Hotels, Educational Institutions & Hospital Workers [KUDHEIHA] & another; Iminti & 72 others (Interested Parties) (Cause E722 of 2022) [2023] KEELRC 218 (KLR) (31 January 2023) (Ruling)

Neutral citation: [2023] KEELRC 218 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E722 OF 2022
J RIKA, J
JANUARY 31, 2023**

BETWEEN

UNIVERSITY OF NAIROBI CLAIMANT

AND

KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTIONS & HOSPITAL WORKERS [KUDHEIHA] 1ST RESPONDENT

COUNTY LABOUR OFFICER NAIROBI 2ND RESPONDENT

AND

GILFORD IMINTI & 72 OTHERS INTERESTED PARTY

RULING

1. There are several Claims filed by the Parties in various Courts, on interpretation and implementation of clauses 40 and 43 of the 2013-2017 CBA concluded between the Claimant and 1ST Respondent herein, KUDHEIHA.
2. Individual Employees, claiming to be beneficiaries under the CBA, have filed multiple Claims at the Chief Magistrate’s Courts, claiming payment of gratuity.
3. The record indicates that some Employees have obtained Judgments before the Chief Magistrate’s Court, for payment of gratuity under the clause.
4. At the E&LRC, several Claims have been filed, on the same subject matter, interpretation and implementation of the CBA.



5. In the current Claim, the University of Nairobi seeks orders that proceedings in 64 Claims, filed at the Chief Magistrate’s Court, as well as any other proceedings on the subject that may be initiated, are stayed, pending hearing and determination of the Claim.
6. The Claimant seeks also, an order of temporary injunction, restraining the 1st Respondent, its Members, Employees, Agents, Servants and whomsoever, acting on its behalf, from instituting legal proceedings relating to payment of gratuity under the CBA.
7. The dispute[s] have been before the Ministry of Labour, where the 2nd Respondent has issued Conciliation Report, in favour of payment of gratuity to the Employees.
8. There are other Claims before the E&LRC still on the subject of the gratuity clause in the CBA of 2013-2017. There is E&LRC Cause Number E084 of 2022, initiated by the Claimant herein, against the 1st Respondent KUDHEIHA, and Deputy Labour Commissioner, George Imbaya Tsimuli. This Claim is indicated to have been received by the Court, on 9th June 2022. Similar orders, as sought in the current proceedings, freezing the proceedings in the Chief Magistrate’s Court are pursued. The 58th and 62nd Interested Parties submit that there is another Claim on the subject, involving the Parties, Cause Number E107 of 2022, pending before Hon. Judge Monica Mbaru. The 1st Respondent KUDHEIHA, has presented its own Claim, Cause Number E790 of 2022 against the Claimant herein, asking the Court to interpret clause 40 of the 2013-2017 CBA, and to order the Claimant herein to honour the clause, by paying Employees gratuity at the rate of 31% of the basic salary, for each complete year of service. This Cause was filed after Cause Number E722 of 2022.
9. Various Respondents have raised preliminary points of objection, which the Court directed are merged with the Claimant’s Application, and determined together. They complain about the multiple Claims filed by the Claimant, and invoke the doctrine of res sub judice. They submit that they are Employees or former Employees of the Claimant, and it would be prejudicial to them, to be stopped from filing, prosecuting Claims or executing Judgments on the subject. The Claimant has not established a prima facie case, to warrant the orders sought. The 2nd Respondent states there is no reason for the Labour Office to be involved in the dispute, because the issues are between the Employer and the Employees. The 1st Respondent submits that the dispute should first have been submitted to the Ministry of Labour for conciliation. 1st Respondent submits further, that filing of multiple Claims can be resolved by way of consolidation of the Claims, or by proceeding with one Claim as a test Claim. The Employees, not the Claimant, risk suffering irreparable harm.
10. The Court directed Parties to file Submissions on the Application and various Objections, subject matter of this Ruling. The Claim was last mentioned on 29th November 2022.

The Court Finds:

11. The Claimant herein in a Public University, which has a Recognition Agreement with the 1st Respondent. They have concluded CBAs, among them the contested CBA of 2013-2017. Grievances and disputes are handled within the existing labour relations structures.
12. The Court highly doubts that the Chief Magistrate’s Court, which has been moved by several Employees acting individually, to grant gratuity under the CBA, has jurisdiction.
13. Interpretation and implementation of the CBA is a trade dispute, under the *Labour Relations Act*, 2007. The dispute has been reported to the Ministry of Labour, and conciliation undertaken.



14. Gazette Notice Number 6024 of 2018 issued by the Hon. Chief Justice, appoints all Magistrates of the rank of Senior Resident Magistrate, and above, as Special Magistrates, designated to hear employment and labour relations cases, arising within their jurisdictions.
15. Jurisdiction is limited as follows: -
 - a] Disputes arising from contracts of employment, [excluding trade disputes, under the [Labour Relations Act, 2007](#)] where Employee's gross monthly salary does not exceed Kshs. 80,000, as commenced and continued in accordance with the Employment and Labour Relations Court [Procedure] Rules, 2016.
 - b] Matters relating to the following specific area –
 - [i] offences under the [Work Injury Benefits Act, 2007](#).
 - [ii] offences under the [Employment Act, 2007](#).
 - [iii] offences under the [Labour Institutions Act, 2007](#).
 - [iv] offences under [Occupational Safety and Health Act, 2007](#).
 - [v] offences under the [Labour Relations Act, 2007](#).
16. A 'trade dispute' under Section 2 of the [Labour Relations Act](#), means, 'a dispute or difference, or an apprehended dispute or difference, between Employers and Employees, between Employers and Trade Unions, or between an Employers' Organization and Employees or Trade Unions, concerning any employment matter, and includes disputes regarding the dismissal, suspension or redundancy of Employee, allocation of work, or the recognition of a Trade Union.'
17. The various Claims filed in this Court, and in the Chief Magistrate's Court, are trade disputes. They concern interpretation and implementation of a CBA, made pursuant to the [Labour Relations Act](#). They are disputes, between an Employer and its Employees, or between an Employer and a Trade Union. They have been reported to the Minister of Labour, and conciliation carried out, under the [Labour Relations Act](#).
18. Whether presented before the Courts by the Trade Union or Individual Employees, the disputes are trade disputes, as defined by the [Labour Relations Act](#).
19. This Court therefore has considerable doubt, on the Chief Magistrate's Court's jurisdiction, in receiving and considering the Claims filed by the various Employees, on interpretation and implementation of the CBA.
20. The Court acknowledges that, it is however for each Court to determine its own jurisdiction under the principle of competence-competence, and proceedings cannot be stayed by the E&LRC based on its own view of the Chief Magistrate's Court's jurisdiction, in the matter.
21. On multiplicity of Claims filed before the Courts, it is noted that this has been occasioned by all the Parties, the Employer, the Trade Union, and Individual Employees. The 1st Respondent filed a Claim on the same subject-matter while aware that the Claim herein was already before the Court. Individual Employees filed Claims before the Chief Magistrate's Court, against the Claimant, and excluding the 1st Respondent. The Claimant and the 1st Respondent are the authors of the CBA; they own the CBA; and ought as a matter of necessity, to have been involved in any Claim relating to interpretation and implementation of the CBA.



22. Claims filed in the Chief Magistrate's Court pose a challenge to those before the E&LRC, in that there could be Appeals emanating from the Chief Magistrate's Court, while there are original Claims on the same subject, pending before the E&LRC.
23. Judicial coherence and consistence are impaired, when multiple Claims are presented, worst of all before different jurisdictions.
24. Claims affecting the same workplace, the same subject matter, same Employer, Trade Union and Employees, ought to be heard before the same Court, the same Judge or Magistrate. The Judiciary risks being a tool for industrial anarchy, if the same dispute is split into different Claims, presented in different Courts, with different decisions made, in accordance with each Court's interpretation of the same workplace CBA.
25. The Ministry of Labour is not prejudiced in being joined to the Proceedings. It has dealt with the dispute at conciliation. It is in the thick of the dispute. It has in fact, dealt with various disputes on the subject, reported at different points. It can assist the Court further in the dispute, in the spirit of tripartism, by explaining in detail its findings and recommendations, on the disputed clause. There is nothing to be lost, by the Ministry remaining in the proceedings.
26. The Court is of the view that the dispute is not well served, by upholding preliminary objection, and declining the Claim outright, on the grounds advanced by the Respondents and Interested Party. As stated by the 1st Respondent, in defending its own infraction in filing a new Claim, while the current Claim was already before the Court, it is open to the Court to consolidate the various Claims, or treat one Claim as a test Claim. In a dispute involving over 70 Employees, some represented by the Union and others proceeding in person, it is not unusual to be encountered with multiple Claims.
27. The Court does not think however, that it should issue blanket order for stay of proceedings as pleaded by the Claimant. The various Claimants named in the Claims that are before the Chief Magistrate's Court, are not parties in this Claim, and need to be heard before the respective proceedings can be stayed. It would be irregular for this Court to issue a blanket order staying various proceedings, without involvement of the affected parties. It would be illegal and irregular, and contrary to the principle of access to justice, to issue an order barring the filing of potential Claims on the subject.
28. The Claimant should move the various Trial Courts to stay their proceedings, or stay execution of Judgment as the case may be. It is open to the Claimant to pursue appeals from the Trial Courts, instead of asking this Court to improperly, exercise supervisory jurisdiction. On similar matters pending before the E&LRC, the Deputy Registrar ought to place them before the Principal Judge for directions.

It Is Ordered

- a. Amendment to the Claimant's Pleadings is allowed.
- b. Preliminary objection seeking striking out of the Claim is declined
- c. The Claimant's application to stay proceedings of various Claims before the Chief Magistrate's Court, and to stay filing of potential Claims, is declined.
- d. The different Claims, pending before the E&LRC on the subject matter to be placed together, before the Principal Judge for directions.
- e. A date for mention before the Principal Judge, to be assigned at the Registry.
- f. Costs in the cause.



DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, UNDER THE
MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 31ST DAY OF
JANUARY 2023.

JAMES RIKA

JUDGE

