



**Ngatia & 5 others v University of Nairobi (Cause 1594 of 2014)
[2023] KEELRC 2244 (KLR) (28 September 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2244 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1594 OF 2014
L NDOLO, J
SEPTEMBER 28, 2023**

BETWEEN

**FREDRICK IREGI NGATIA 1ST CLAIMANT
JOSEPH KARIUKI MAINA 2ND CLAIMANT
JOSEPH KAHINDI KUNGU 3RD CLAIMANT
JOSEPH NDUNGU THUO 4TH CLAIMANT
SIMON GACHURU THUO 5TH CLAIMANT
CATHERINE NJERI GAKURU 6TH CLAIMANT**

AND

UNIVERSITY OF NAIROBI RESPONDENT

JUDGMENT

1. The Claimants are all former employees of the University of Nairobi. By their Memorandum of Claim dated 19th September 2014 and amended on 20th December 2019, they seek the following amounts on account of uniform and protective gear:
 - a. 1st Claimant: Fredrick Ngatia – Kshs. 647,500
 - b. 2nd Claimant: Joseph Kariuki Maina – Kshs. 562,800
 - c. 3rd Claimant: Joseph Kahindi Ndungu – Kshs. 410,400
 - d. 4th Claimant: Joseph Ndungu Thuo – Kshs. 272,600
 - e. 5th Claimant: Simon Gachuru Thuo – Kshs. 678,340
 - f. 6th Claimant: Catherine Njeri Gakuru – Kshs. 2,662,712.76



2. The Respondent filed a Memorandum of Defence dated 2nd May 2017. At the trial, the 1st Claimant, Fredrick Iregi Ngatia testified on his own behalf and on behalf of his co-claimants. The Respondent called its Deputy Registrar- Industrial Relations, Harrison Shimanyi Akala..

The Claimants' Case

3. The Claimants state that they were employed by the Respondent for periods ranging from 25 to 33 years. They claim that upon retirement, they were not given their accumulated uniform and protective gear nor their cash equivalent.
4. The Claimants aver that they were entitled to protective gear while performing their official duties. They therefore claim the cash equivalent for the period they were not issued with uniform and protective gear as provided in Clause 35 of the applicable Collective Bargaining Agreement (CBA).
5. The Claimants accuse the Respondent of unreasonably and without justifiable cause, failing to issue them with protective gear for the performance of their duties.

The Respondent's Case

6. In its Memorandum of Defence dated 2nd May 2017 and filed in court on 5th May 2017, the Respondent admits having engaged the Claimants in various categories for periods ranging from 25 to 33 years. The Respondent further concedes that the Claimants left its employment by way of retirement.
7. The Respondent states that by virtue of the obtaining CBA, certain categories of employees including artisans, sanitary staff, library staff, headmen, kitchen staff, grounds staff, office messengers, drivers, cleaners and security staff were entitled to uniform. The Respondent puts the Claimants to strict proof that they fell within the prescribed categories.
8. The Respondent adds that the details of the uniform to be supplied to various categories of employees were to be worked out between the employer and the shop stewards under the direction of the Works Committee.
9. The Respondent further states that the CBA provided that where uniform was not issued by the end of February of the financial year in which it was due, the union and the employer would meet in the subsequent month to discuss the issue and if they did not reach an agreement and uniform was not issued by December of the subsequent financial year, the employer would undertake to compensate the affected employees. The Respondent contends that compensation for unissued uniform was not automatic.
10. The Respondent asserts that none of the Claimants has produced any proof of discussions between the union and the employer to warrant the claim for compensation.
11. The Respondent claims to have issued each of the Claimants with the required uniform in accordance with the CBA. The Respondent further accuses the Claimants of delay in bringing their claim, well after retirement.

Findings and Determination

12. By their claim, the Claimants seek the cash equivalent of unissued uniform. They however did not provide any documentary evidence to show that they had actually expended the claimed amounts in purchase of uniform. The specific amounts claimed were unsupported and therefore unverifiable.
13. The Claimants' claim being in the nature of special damages, ought to have been specifically pleaded and proved with a degree of certainty and particularity (see *Richard Okuku Oloo v South Nyanza Sugar*



Co. Ltd [2013] eKLR). All the Claimants did was to throw figures at the Court. They therefore failed to discharge their evidential burden and their claim must fail.

14. In the end, the Claimants' entire claim fails and is dismissed.

15. Each party will bear their own costs.

16. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 28TH DAY OF SEPTEMBER 2023

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JUDGE

Appearance

Ms. Wavinya for the Claimant

Mr. Omondi for the Respondent

