



Kenya Union of Domestic, Hotels, Educational Institutions and Allied Workers [KUDHEIHA] v University of Nairobi Council & another (Cause E502 of 2022) [2023] KEELRC 3063 (KLR) (30 November 2023) (Ruling)

Neutral citation: [2023] KEELRC 3063 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E502 OF 2022
J RIKA, J
NOVEMBER 30, 2023**

BETWEEN

KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTIONS AND ALLIED WORKERS [KUDHEIHA] CLAIMANT

AND

UNIVERSITY OF NAIROBI COUNCIL 1ST RESPONDENT

THE VICE-CHANCELLOR UNIVERSITY OF NAIROBI 2ND RESPONDENT

RULING

1. The Claimant Union filed the Claim herein, on 24th June 2021, on behalf of 3 of its members, Daniel Musyimi Muasya, Julius Owichi Owuor and Robert Kipkorir Chirchir [Grievants].
2. The Claimant states that the Grievants’ contracts were unfairly terminated by the Respondent, and seeks orders of reinstatement, or compensation, and a host of terminal benefits.
3. The Respondents filed a Notice of Preliminary Objection, dated 7th March 2023, which is the subject matter of this Ruling. The Preliminary Objection is based on the doctrine of *res judicata*. It is submitted by the Respondents, that there are 2 Judgments relating to the dispute, rendered in this Court’s Petition Number E020 of 2021, Kudheiha v. University of Nairobi & Another, and Milimani Commercial Courts C.M.E.L Number 123 of 2018, Robert Kipkorir Kipng’etich v. University of Nairobi.
4. It was agreed by the Parties to have the Preliminary Objection considered and determined on the strength of the record and submissions. Parties confirmed the filing and exchange of their submissions on 3rd October 2023.



5. The Respondents state that in both Judgments cited above, same Parties and issues were involved. The respective Courts made findings and determination on the same issues.
6. The Claimant regurgitates the substance of its submissions in Petition Number E020 of 2021, in its current submissions dated 3rd May 2023. It is submitted further that the Preliminary Objection is intended to interfere with, and infringe the fundamental rights and freedoms of the Claimant and the Grievants. Without demonstrating how, the Claimant, postulates that Petition Number E020 of 2021 and the Cause herein are distinct. Lastly, the Claimant ‘respectfully seeks that this Court recuses itself..’

The Court Finds

7. There was no material placed before the Court by the Claimant, to warrant recusal of the Judge who is seized of this Cause. No formal application for recusal was filed by the Claimant. There is no foundation, to this half-hearted prayer, for recusal of the Judge.
8. It is clear that the Claim herein is res judicata, at least with regard to Petition E020 of 2021.
9. The Claimant brought this Petition on behalf of 140 of its members, former Employees of the University of Nairobi. It was a collective Claim, based on the CBA concluded between the Claimant and the University of Nairobi. The 3 Grievants in the current Claim, were members of the Claimant Union, and part of the collective Claim presented by their Union. They were petitioning under the Union, and are presently claiming under the Union.
10. The Claimant argued in the Petition that failure by the Respondent University to renew fixed terms contracts of its members, was null and void, and that the nature of the work performed by its members, demanded that the members are on permanent and pensionable terms. It was argued by the Claimant, rather disconcertingly, that its members’ contracts ought to have been open-ended, never end, unless the University of Nairobi closed down altogether.
11. The Court rejected this line of thinking, and adjudicated on all the issues raised by the Claimant in its Petition. The same primary prayer in the Petition - unconditional reinstatement of the Grievants - is being sought in the Claim herein.
12. In the view of the Court, the Claim is clearly res judicata. The Claimant should pursue its Appeal against the Judgment of the Court in Petition E020 of 2021, instead of pursuing disparate Claims on behalf of individual members, in a dispute that was collectively presented and determined.

It Is Ordered

- a. The Preliminary Objection is upheld.
- b. The Claim is declined under the doctrine of res judicata, with costs to the Respondent.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 30TH DAY NOVEMBER OF 2023.

JAMES RIKA
JUDGE

