



**Njoroge v Egerton Univeristy (Cause 376 of 2017)
[2021] KEELRC 2312 (KLR) (21 June 2021) (Judgment)**

Neutral citation: [2021] KEELRC 2312 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE 376 OF 2017
HS WASILWA, J
JUNE 21, 2021**

BETWEEN

JAMES MUNGAI NJOROGE CLAIMANT

AND

EGERTON UNIVERISTY RESPONDENT

JUDGMENT

1. The Claimant herein filed a Memorandum of Claim dated 26th July, 2017, on the 3rd August, 2017 through the firm of Ndeda and company Advocates alleging breach of section 11 of the 2012/2013 CBA in that the Respondent failed to grant him tuition waiver as contemplated under the CBA 2012/2013.
2. The summary of the Claimant's case is that the Claimant was employed by the Respondent on the 21st March, 1983 as a general labourer. Subsequently, he was promoted to carry out clerical work under general clerk grade 1 and kept on rising up the corporate ladder to be the general clerk grade 1V.
3. During the course of his employment the Claimant was inspired to further his studies and being in an institution of higher learning, he registered and undertook a diploma in record management which course earned him a promotion in the year 2013 and was now a library assistant.
4. Before that in the year 2012, the Claimant applied to pursue a course in BA in Sociology and Religious studies which application was approved after passing through all the requisite process and departments. It is averred that normally when an employee of the university wanted to pursue further studies in the university, his or her application was tabled before the department staff training committee who after approval would forward to the Registrar for the purposes of effecting Tuition waivers. He states that an employee was granted 75% waiver in self sponsored Programmes (SSP) but for regular program the employee was entitled to 100% waiver this was in accordance with section 11.0(a), (j),11 of the 2012/2013 CBA.



5. He states that the university accepted his application by its letter of 4th September, 2012 and the Claimant was registered under number AP 112/34005/12. Later on the Claimant was given another offer letter under registration number AP 13/34005/12 meaning that the Claimant was offered to study BA in Sociology and History.
6. It is this mix up of registration number that made it difficult for the Claimant to pay his 25% tuition fees as the system was showing the Claimant was studying Sociology and history when in real sense the claimant was studying Sociology and Religious Studies. He added that it was impossible to pay the said fees using the wrong registration number and his name was therefore not in the system with regard to the course he was undertaking.
7. Several correspondences ensued thereafter on the correction of the anomaly which was rectified by the Respondent vide the letter of 17th September, 2014. It is at this point that the Claimant was now able to remit his tuition fees having been unable to for the last year due to the erroneous numbers of course registration. It was noted at that point that the Respondent had only paid tuition waiver of 70% for the Claimant once on the 14th November, 2015 and the Claimant was thus in arrears and could not graduate with his classmates in the graduation of 4th December, 2015.
8. The Claimant avers that he followed up and was informed that the tuition waiver was not applicable to him because he was pursuing a course that is not relevant to his work. He states that the Respondent was aware of the courses he had applied for and the turning down of payment of waiver fees was an afterthought, made in bad faith.
9. The Claimant then appealed against the decision by the Respondent and the Respondent through the assistant administration officer advised the Claimant to reapply for the tuition waiver, which the Claimant did by his letter of 16th October, 2014. The Claimant then received a response from the Respondent granting him tuition waiver of 70% instead of the 75% provided in the CBA. He further lodged an appeal which was never acted upon.
10. The Claimant therefore prays for the following reliefs; -
 - a. That the Honourable Court do find that by refusing to grant the Claimant the tuition waiver, the Respondent discriminated against the Claimant and therefore their actions were unfair.
 - b. That by refusing to grant the Claimant tuition fee waiver when others were granted same, the Claimant suffered discrimination, frustration and psychological torture.
 - c. THAT failure to grant tuition fee waiver also made the Claimant to suffer in failing to graduate with other Respondent's staffs and students who graduated on the 4th December 2015 hence four (4) years studies period thrown in the wind.
 - d. THAT the Honourable Court do give the Claimant protection as provided for under the provisions of section 46(h) of the *Employment Act*.
 - e. THAT the Honourable Court do order the Respondent to pay to the Claimant the tuition fee waiver as agreed to in the CBA 75% for (four years) for the whole period of studies to enable the Claimant graduate as he intended to.
 - f. THAT having caused the mixed up in registration numbers, the Claimant could not pay tuition fees even on his own, as the course management could not allow him to pay his fees using the wrong cause number, still this caused the Claimant a lot of suffering as his studies wishes were hanging due to a mistake which was not of his own making, therefore instead of paying the tuition fee waiver 75%. The Claimant is praying to the Honourable Court to order



the Respondent to pay tuition fee 100% for four years to cater for this mistake made by the Respondent and to enable the Claimant graduate. In the next graduation ceremony, given that the Claimant is almost retiring from employment.

- g. THAT as having been stated elsewhere herein, despite having not been able to benefit on the tuition fee waiver, the Claimant attended classes and obtained pass grades which could enable the Claimant graduate with a degree on second class lower division. See the transcripts for year 1, 2, 3 and 4 academic years.
- h. THAT there was a saying when we were at school which stated that time wasted will never return. The Claimant went through the four years' academic years painfully and even sat for examination but could not graduate due to the crisis which was erected in his education way for no reasonable cause at all. The four academic years were properly handled by the Claimant who did not waste the opportunity given to him except that the Respondent set on his right to benefit on the agreed to right of a tuition fee waiver negatively, hence he could not graduate at the end of the four academic years.
- i. THAT it is the Claimants humble prayers that the damage already done to him is big and the Honourable court have the powers to order for a redemption in the form which can give a reasonable remedy based on Claimant's current gross pay apart from the tuition fee Pay. Thus the Claimant pay if he could have graduated on the 4th December 2015 as clause 11.0d.
 - a. THAT the CBA clause 11d states that upon successful completion of a recognized course of study, such achievement shall immediately be accorded recognition through two(2) salary increments.
 - b. THAT the two years pay increase should have landed the Claimant's pay to an increment of July 2016, the totals is now Kshs. 24,646/= basic pay, Kshs. 20,416/= housing allowance Kshs. 9,000/=, commuter allowance and Kshs. 1,860/= being medical allowance totaling to Kshs.56,689/= per month plus two salary recognition as provided for under the provisions of the CBA section 11.0d. see payslips marked "JMN 26"
 - c. THAT the Claimant pray to the Honourable Court to consider giving or ordering the Respondent to pay him compensation based on the gross salary at July 2016 which was Kshs. 25,413/= basic pay and Kshs. 20,416 house allowance, Kshs. 9,000/= commuter allowance totaling to Kshs. 56,689/= per month plus two salary recognition as provided for under the provisions of the CBA section 11.0d. See payslips marked "JMN 27".
 - d. THAT going by the trend as per the payslips for June and July 2016 attached herewith and marked as JMN 27 and JMN 28, the Claimant's two increment could have landed him to a basic salary of Kshs, 27,906, Kshs. 20,416/= house allowance, Kshs. 9,000/= commuter allowance and 1,860 house allowance totaling to Kshs. 59,182/= gross salary per month. See the Respondent's salary increment conversion chart marked as "JMN 28".
 - e. That the Kshs 59.182 gross salary X 12 months X 4 Years (48 months) = 2,840,736 as compensation for damages caused by discrimination and failing to pay tuition fees for mistake caused by the Respondent and psychological torture by frustrating the Claimant by making him not graduate together with other Respondents' staff/ students on 4th December, 2015.



f. That the Respondent to pay costs of this Suit.

11. The Respondent entered appearance on the 16th October, 2017 and filed a response to the claim on the 28th May, 2018. It is averred that the Claimant being an employee of the Respondent was promoted to the position of Assistant librarian after studying diploma in Archives and records management in 2012 from Inoorero University. Thereafter the Claimant sought to pursue Bachelors Degree in Art, Department of Peace security and Social studies however the university did not approve the fees waiver because the course the Claimant wanted to pursue was not relevant to his duties.
12. The Respondent through its Registrar Administration, Dr, T. Serem informed the Claimant of the Respondent's decision to decline the fees waiver vide the letter of 10.4.2013 well in advance. The Respondent added that the Claimant made a similar application seeking for fees waiver in the year 2015 which was mistakenly allowed and when the anomaly was detected the decision was reversed and the Claimant now is in arrears of Kshs 396,500.
13. The Respondent maintain that the criteria used in allowing and denying fees waiver was used across board and no one was discriminated in the process. It was stated that the Claimant having sought to undertake a course that was not inline with his duties was not qualified to be granted tuition fees waivers. He further averred that the waiver operated in a way in which the employee's fees were paid by the Respondent as such the Claimant cannot claim for the fees as if he was entitled to the same.
14. The Claimant filed a reply to defence and reiterated his claim and in addition stated that two other employees, one who had diploma in records and Archives management and working in department of computer science applied for bachelors in Sociology and Religion and was approved and fees waiver granted. Also another with diploma in Records and Archives applied for a course in sociology and religion which was approved by the Respondent and granted fees waiver. He thus maintained that he was discriminated upon.

Hearing.

15. The Claimant testified as CW-1 and adopted his statement dated 24.8.2021 and testified that the Respondent denied him tuition fees waiver when the same is provided for under section 11 of the 2012/2013 CBA. He testified that the waiver application was initially denied and later approved and was even granted waiver for one year. He maintains that tuition waiver is not given on relevance of application rather that the same is granted as long as the course is provided by the University. He added that he followed due procedure in the application of the fees waiver.
16. He testified that the issue arose when he applied for the course of Sociology and Religion but the university erroneously gave him a wrong admission number which took a whole semester to correct. He also avers that in his class there were 4 students from his department who were granted the fees waiver and evidence of the same is marked as TW-A to TW-F. He stated that he lost opportunities when he could not complete his studies due to lack of fees and even retired at a lower grade which could not have been the case if he completed his degree course.
17. Upon cross examination by Masese Advocates, the Claimant testified that he applied to study sociology and religion which was offered by the Respondent and allowed. He stated that there are procedures in applying for tuition waiver and that there is no provision that the committee should decline tuition waiver on the basis of relevance of the course, as long as the course is offered in the university the same ought to be allowed.
18. Upon further cross examination the Claimant admitted that two other employees such as Grace G Mwaura and Doreen Gatuiri tuition waiver were decline since the course was not relevant to their



duties. He also admitted receiving letter informing him that his course was not relevant after about 6 months of studying.

19. The Respondent called one witness, Janet Bii as the RW-1 who testified that she is the Respondent's legal officer having worked for the Respondent for 15 years. She avers that the Claimant was their employee who retired two years ago. At the Respondent's employ the Claimant was a member of the Union and was entitled to tuition waiver however the Claimant could not be granted the said waiver because the course he wanted to study was not relevant to his duties.
20. She avers that admission to study a course and tuition waiver were two separate issues and gave the procedure that once a staff member was enrolled to a course he/she was mandated to apply for fees tuition waivers which could be allowed or disallowed.
21. Upon cross examination by Awuor Advocate, RW-1 testified that she became aware of the issue at hand when the Respondent was sued by the Claimant. She admitted that she was aware that the Claimant sought and obtained permission from his department to undertake his further studies. She avers that she was not aware the time taken by the Respondent to communicate the relevance of the course undertaken by the Claimant. She also stated that she was not aware of any staff that undertook irrelevant course and awarded tuition waiver.

Claimant's Submissions.

22. The gist of the Claimant submission is that the Claimant being a member of the Union was entitled to tuition fees waiver as provided for under section 11 of 2012/2013 CBA. He argued that the Claimant followed due procedure in applying for the fees waiver and it's the Respondent that made a mistake in giving him registration number that made it impossible for him to make his portion of the fees. He further argued that the Respondent's allegation that his waiver was not allowed on basis of studying an irrelevant course is not justified rather discriminatory because other employee such as Kepha Turungi Omog of AP112/31254/10 from the department of Agriculture, Margaret Masame of number AP112/340010/12 from department of science and Jane Kabargei of AP112/ 340011/12 from department of procumbent were all allowed to pursue degree in Sociology and Religion and granted tuition waiver as such his denial of the said waiver is not justified.

Respondent's Submissions.

23. The Respondent on the other hand maintained that the Claimant indeed applied and was allowed to pursue further studies at the University however the tuition fees waiver was not granted for the reason that the course the Claimant was pursuing ,him being a librarian was not relevant for his duties and therefore not qualified for tuition fees waiver as provided for under clause 11(d)&(e)of the CBA.it was argued that the Claimant was informed in advance of the decision of the Respondent disallowing the fees waiver vide the letter of 10.4.2013.
24. It was also submitted that the Claimant cannot claim to be paid the tuition waiver since the same was only beneficial to the students that studies at the university and not paid to employees as debt. In support of their case the Respondent cited the case of Francis Okello Odundo v Jaramogi Oginga Odinga Universtiy of Science and Technology [2017] eKLR.
25. I have examined the evidence and submissions of the parties herein. The Claimants contention is that he was denied tuition waiver by the Respondent when he was entitled to under Section 11 of the 2012/2013 CBA.



26. Section 11 of the CBA states as follows:-

“Education & Training

Members of staff, their sponsors and children studying at Egerton University shall be given tuition fees waiver as follows:-

- (a) staff
 - (i) Regular Programmes – 100%
 - (ii) SSP Programmes – 75% for both males and females
- (b)
- (c) Upon successful completion of a recognized course of study, such achievement shall immediately be accorded recognition through two (2) salary increments.....”

- 27. The Claimant appealed for permission to study vide a letter dated 17/10/2012 (Exh. JMN XV).
- 28. Permission for study was granted vide a letter dated 12/11/2012 by the Library Training Committee but this was subject to approval by the Egerton University Training Committee vide a letter dated 10/4/2013.
- 29. The request for tuition waiver by the Claimant was denied on the ground that he was pursuing a course that is not relevant to his current duties.
- 30. The Claimant appealed this decision vide his letter of 29th April 2013 (APP JMN XVIII).
- 31. Vide a letter dated 10/2/2015 the Claimant was informed that he had been given a tuition waiver of 70% waiver for only 1 year with effect from September 2014 to August 2015.
- 32. The Claimant tried to appeal this decision again but it was denied again hence this claim.
- 33. The question then is whether the Claimant was entitled to the tuition waiver and if the Respondent erred in denying him that request.
- 34. The Respondents aver that they rejected the Claimant’s request because he was undertaking a course not relevant to his training.
- 35. I have cited the CBA in respect of the Claimant chose to rely on when applying for the tuition waiver. Section 11 of the CBA is clear that tuition waiver is given to all staff on regular programmes at 100% and the SSP programmes at 75%.
- 36. The relevancy of the course in question was not included in this clause and the clause was couched in mandatory terms – “shall” implying that there was no room for denial of the 100% waiver of tuition that the Claimant was entitled to.
- 37. In my view the Respondent unfairly denied the Claimant his request for tuition waiver and even discretionally gave him 70% for 1 year which was not based on the CBA.
- 38. It is my finding that the Claimant was unfairly treated and was entitled to the tuition waiver which he was denied.
- 39. In view of the unfairness, the Claimant suffered an injustice which had other ripple effects including missing out in his graduation and promotion.



40. I therefore find that the Claimant is entitled to damages and I award him 1 million in damages plus costs and interest.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 21ST DAY OF JUNE, 2022.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Awuor for Claimant – present

Respondents – absent

Court Assistant - Fred

