

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT**  
**NAIROBI**  
**ELRC PETITION NO. E115 OF 2024**

**KENYA NATIONAL UNION OF NURSES.....PETITIONER**

**VERSUS**

**SALARIES AND REMUNERATION COMMISSION.....1<sup>ST</sup> RESPONDENT**

**COUNCIL OF GOVERNORS.....2<sup>ND</sup> RESPONDENT**

**PUBLIC SERVICE COMMISSION.....3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

The facts in this petition dated 20<sup>th</sup> July 2024 are not in dispute. The Petitioner union and the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents had engaged in collective bargaining for the review of nurses and other public servants basic salary structures allowances and benefits for the implementation in the financial year 2024/2025.

That meanwhile, the 1<sup>st</sup> Respondent, SRC on 3/8/2023 issued a circular Reference number SRC/TS/24/1/(5) on the third remuneration review cycle for 2020/2021 – 2024/2025 which advised on the annual increment of the basic salary and allowances for the non-state officers.

That despite the concluded Collective Bargaining Agreements which provide for the annual increment of salaries and allowances for the employees including the nurses engaged by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents; the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents issued the circular Reference Number

SRC/TS/24(6) announcing that the review of the other public officers' basic salary structure, allowances and benefits for the implementation in the financial year 2024/2025 had been deferred until further notice.

It is the Petitioner's case that the effect of the advice by the 1<sup>st</sup> Respondent and the resultant circular by the Respondent is that:

- (a) The implementation of job evaluation resulting in the financial year 2024/2025 shall be suspended as no funding shall be availed.
- (b) The Collective Bargaining Agreements in public service institution with provisions on salary review shall not be implemented.

The Petitioner states that the advisory by the 1<sup>st</sup> Respondent was relayed *suo moto*, without any proposals or request by the stakeholders including the Petitioner and neither was the advice rendered in response to any specific memorandum. That this action by the 1<sup>st</sup> Respondent is ultra vires the constitutional provisions and statute and regulations that govern its mandate and operation.

The Petitioner singling out Regulation 12 of SRC (Remuneration and Benefits of State and Public Officers) Regulations with regard to the need to take heed of performance and productivity, the prevailing collective bargaining agreements and the need to compensate the public officers due to increased cost of living.

The Petitioner states that implementation of the 1<sup>st</sup> Respondent's advisory has resulted in adverse effects on the fair remuneration of public officers and the nurses in particular represented by the Petitioner, a consequent

effect on service delivery and consequent breach of contractual obligations under the various Collective Bargaining Agreements.

That to the extent that the review of basic salary structures has been held in abeyance indefinitely brings uncertainty in the employment contracts of the nurses and are completely unsure of their terms and conditions of service despite existing contractual (CBA) obligations which are now overridden at will by the 1<sup>st</sup> Respondent.

That the conduct by the 1<sup>st</sup> Respondent violates Article 21, 24, 27, 28, 35, 41, 47, 230(4), 230(5) and 232 of the Constitution of Kenya 2010.

That the constitution should be interpreted in such a manner that promotes values, purpose and principles, advances human rights and fundamental freedoms and contributes to good governance as per Article 259 of the Constitution.

The Petition refers to various sections of the Salaries and Remuneration Act and Regulations made thereunder and in particular Regulations 4, 5, 12 and 15 thereof.

In particular Regulation 13 require mandatorily, that SRC shall undertake its mandate through consultation with the stakeholders while Regulation 15 guarantees the annual salary increment of state and public officers on the basis of productivity and performance.

Regulation 12 on the other hand outlines facts to be considered by SRC while advising on remuneration for other public officers, including, inter alia, the results from job evaluation and productivity, the fixed and variable components of the remuneration, Collective Bargaining Agreements, salary structures in the public service and legal social, economic and environmental issues.

The Petitioner states that SRC overlooked all the above in its punitive advisory to the loss and detriment of the nurses who comprise the membership of the Petitioner.

## **Response**

The 1<sup>st</sup> Respondent in its replying affidavit states that it is an independent constitutional commission established under Article 230 of the constitution with a mandate to:

- (a) Set and regularly review the remuneration and benefits of all state officers and
- (b) Advise the national and county governments on the remuneration and benefits of all other public officers.

That in pursuit of objective 230(4) (b) above the 1<sup>st</sup> Respondent gave advice to the national and county governments as communicated vide circular Ref. No: SRC/TS/24(61) dated 16<sup>th</sup> July 2024.

That the said circular advised the national and county governments to defer implementation of the remuneration and benefits for all other public officers for the financial year 2024/2025.

That the decision was informed directly from the Government's decision to withdraw the Finance Bill 2024 following nation wide protests witnessed in the country.

The 1<sup>st</sup> Respondent states that in preparation for the financial years 2023/2024 and 2024/2025, it duly consulted the National Treasury regarding the projected costs of implementing the remuneration and benefits review in the public service. That following these consultations, the National Treasury provided specific budgetary guidance to the 1<sup>st</sup> Respondent advising that any review of remuneration structure should be undertaken within the following budget parameters:-

- (i) A budget provision of Kshs. 21.7 Billion for the financial year 2023/2024; and
- (ii) The budget requirement of Kshs. 21.7 Billion for the financial year 2024/2025 would be factored in the budget projections during preparation of the financial year 2024/2025 in the medium term budget.

That on the above basis, the 1<sup>st</sup> Respondent proceeded to issue its advice to the national and country governments regarding the remuneration and benefits for all other public officers under the 3<sup>rd</sup> remuneration and benefits review cycle covering both the financial years 2023/2024 and 2024/2025.

However, in cognizance of the emerging fiscal constraints and the budget cuts emanating from withdrawal of the Finance Bill 2024, the 1<sup>st</sup> Respondent vide letter Ref: SRC/TS/12/(6) dated 8<sup>th</sup> July 2024, requested the National Treasury to confirm availability of funds for implementation of

the remuneration and benefits for all public officers for the financial year 2024/2025.

That the National Treasury in response to the 1<sup>st</sup> Respondent's request, advised the 1<sup>st</sup> Respondent that the salary review for the financial year 2024/2025 be deferred to a later date, subject to availability of funding, due to loss of revenue amounting to Kshs. 344.3 Billion emanating from withdrawal of the Finance Bill, 2024.

That it was against this backdrop that the 1<sup>st</sup> Respondent pursuant to its mandate under Article 230(4)(b) of the constitution, duly issued the impugned advice to the national and county governments vide circular Ref. No: SRC/TS/24(61) dated 16<sup>th</sup> July 2024.

The 1<sup>st</sup> Respondent posits therefore, there is no budgetary allocation for the review of remuneration of all other public officers and state officers for the financial year 2024/2025.

That the advisory by the 1<sup>st</sup> Respondent to the national and county governments was lawful, rational and was done in good faith pursuant to the constitutional mandate of SRC in terms of Article 230(4) (b) of the Constitution.

That the petition lack merit and it be dismissed with costs.

That the Supreme Court in ***NHIV versos KUCFAW and another; Attorney General (Interested party) (Petition E024 [2025] KESC 37 (KLR) (30<sup>th</sup>***

**May 2025) (Judgment)**, held that the 1<sup>st</sup> Respondent's advise under Article 230(4) (b) of the Constitution is not merely ceremonial but requires active consideration of prevailing circumstances including fiscal realities and budgetary constraints.

The 1<sup>st</sup> Respondent posits therefore that it cannot be faulted for exercising its advisory function responsibility by taking into account changed financial circumstances.

That deferring the implementation of the remuneration and benefits for the financial year 2024/2025 aligns with the constitutional principle of responsible governance and fiscal prudence of public funds as enshrined in Article 201 of the Constitution, which mandates that public finance be managed in a responsible way that promotes economic development and fiscal sustainability.

That the 1<sup>st</sup> Respondent did not violate Articles 41 and 47 of the Constitution in that it simply exercised its mandated constitutional responsibility for the benefit of the nation at large. That the circular issued was a result of proper consultation and is not *suo moto* as alleged by the Petitioner or at all. That the circular only advised deferment of the implementation but did not negate the contractual obligations between the Petitioner union and the employers contained in the concluded Collective Bargaining Agreement covering the period 2024/2025.

That to the extent that the said CBA had been concluded, there was no obligation on the part of SRC to have the CBA re-opened since that was a

matter of engagement and communication between the union and the employer given the budgetary constraints that were beyond the responsibility of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.

Therefore circular Ref. No: SRC/TS/24(61) dated 16<sup>th</sup> July 2024 represents a lawful, constitutional and necessary response to the unprecedented fiscal crisis occasioned by the withdrawal of the Finance Bill 2024 and the court should declare the circular as such and dismiss the petition.

## **DETERMINATION**

The singular issue for determination in this matter is whether the advice by SRC contained in circular Ref. No: SRC/TS/24(61) dated 16<sup>th</sup> July 2024 violated the legal and constitutional rights of the Petitioner set out in the body of the petition and elaborated in the supporting and further affidavits and submissions by the Petitioner and therefore null and void and it be set aside.

The facts originating this dispute are common cause as set out by the Petitioner and the Respondent, and so there is no need to regurgitate the same. The circular was not issued during the negotiation of the CBA between the union and the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents. SRC did not advice against the agreed review of remuneration and benefits between the employees represented by their union and the employers being the national and county governments employing the nurses who are the affected members of the union.

The roles of SRC set out under section 31 of the Salaries and Remuneration Act and the obligations placed on SRC by Regulations made pursuant to the above provisions kick in during the Collective Bargaining between the union and government on behalf of all other public officers, including nurses as in respect of this case, including as mandated under Regulation 12, SRC to consider

***“the results for job evaluation and productivity, the fixed and variable components of the remuneration, Collective Bargaining Agreements, salary structures in the public service and legal, social, economic and environmental issues.***

**Regulation 13**

***“that the 1<sup>st</sup> Respondent shall undertake its mandate through consultation with the stakeholders and***

**Regulation 15**

***“guarantees the annual salary increment of state and public officers on the basis of productivity and performance.”***

The court is of the considered view and finding that circular Ref. No: SRC/TS/24(61) of 16<sup>th</sup> July 2024 did not interfere with the negotiations of the CBA for the period 2024/2025 vide the impugned circular since that was water under the bridge and so the mandates in the aforesaid Regulations are not applicable to the circumstances that led to the issuance of the circular on the matter of implementation of concluded CBA between the parties.

To the extent that the merging issues that led to withdrawal of the Finance Bill 2024, were matters public knowledge, SRC was obliged to further

advice the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents being the employer of members of the Petitioner union based on consultation between SRC and National Treasury on matters that went beyond the CBA between the parties, which matters were not foreseeable, at the time the CBA was concluded for the period 2024/2025.

The court's conclusion is that SRC acted within its mandate under Article 230(4)(b) and did not violate any of the alleged rights by the Petitioner.

Whereas, SRC is bound to consult the Petitioner before and during the CBA negotiations, this obligation is no longer there after the CBA has been concluded if the decision taken does not alter the substantive contents of the CBA with regard to remuneration and benefits agreed upon. Withdrawal of the Finance Bill 2024 was a matter beyond that which is envisaged under Regulations 12,13 and 15 of the Salaries and Remuneration Commission (Remuneration and Benefit of state and public officers) Regulations. Accordingly, the circular; issued was lawful and in terms of the Constitutional mandate of SRC under Article 230(4)(b).

In the final analysis, the petition lacks merit and is dismissed with no order as to costs.

Dated at Nairobi this **25<sup>th</sup> Day of September 2025.**

**Mathews Nduma**  
**JUDGE**

**Appearance:**

Mr. Malenya for the Petitioner

Mr. Wahome Murakaru for 1<sup>st</sup> Respondent

M/s. Wangechi for 3<sup>rd</sup> Respondent

Mr. Kemboi – Court Assistant

ORIGINAL