

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS
COURT AT NAIROBI
CAUSE NO. E877 OF 2024
KENYA UNION OF COMMERCIAL, FOOD
AND ALLIED WORKERS
CLAIMANT**

**v
NATIONAL CEREALS AND PRODUCE BOARD
RESPONDENT**

**AND
SALARIES AND REMUNERATION
COMMISSION
PARTY**

INTERESTED

EMPLOYMENT AND LABOUR RELATIONS COURT

JUDGMENT

1. The Kenya Union of Commercial, Food & Allied Workers (Union) sued the National Cereals and Produce Board (the Respondent) on 16 October 2024, and it stated the Issue in Dispute as:

Negotiation of Collective Bargaining
NAIROBI
Agreement 2013 - 2017 and 2017 - 2021.

2. The Union named the Salaries and Remuneration Commission (the Commission) as an Interested Party.
3. The Respondent filed a Response on 6 November 20

4. On 29 September 2025, the Union proposed that the Cause be determined based on the pleadings and submissions to be filed.

5. The Respondent and the Commission informed the Court that they did not intend to call any witnesses.

6. The Union filed its submissions on 24 October 2025, the Respondent on 4 November 2025. The Commission's submissions were not on record by agreed timelines.

7. The Union did not isolate the Issues for determination in its submissions. The Respondent identified the Issues in contention as:

- (i) Whether employees of a state corporation are public officers, hence their remuneration and benefits fall under the purview of the Interested Party?
- (ii) Whether the two contentious issues, namely the Clause 5 and Clause 6 of

the Collective Bargaining Agreement covering the period 1st July 2013 to 30th June 2015, touching on basic salary and housing allowance respectively, require the input and

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done by the Interested Party?

(iii) Whether the Claimant should be involved in the correspondence between the Interested Party and the Respondent?



8. The Court has considered the pleadings, affidavits and submissions.

Whether the Respondent is a state corporation and employees' public officers?

9. The Respondent is established under the National Cereals and Produce Board Act and is thus a state corporation under the Ministry of Agriculture by virtue of section 2 of the State Corporations Act.

10. The Respondent operations are funded by monies approved by Parliament.

11. Its employees are public officers within the meaning of Article 260 of the Constitution.

Whether the Respondent's employees' terms and conditions of service (remuneration) are subject to advice by the

Commission?

12. The place of the Commission in the negotiation of Collective Bargaining Agreements within the public sector has now been clarified by the Courts.

13. In *National Hospital Insurance Fund Management Board v Kenya Union of Commercial Food and Allied Workers & another; Attorney General* (Interested Party) (2025) KESC 37 (KLR), the Supreme Court rendered itself thus:

In addition to the 2nd respondent's powers and functions as set out in the SRC Act, which have been set out elsewhere in this decision, the SRC Regulations 2013 provide for the procedure for the submission, review and advise on the remuneration and benefits

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of State and public officers. Regulation 12 lists the factors to be considered when communicating advice on the remuneration of public officers. They include: legal, social, economic and environmental issues; results of job evaluation, performance, productivity and market studies; market rates from the result of comparative market surveys; CBAs; cost of employment against the organisation's capacity to pay; salary structures in the public service; equity and competitiveness among other factors. Before the 4-year-cycle review is conducted, the 2nd respondent is tasked under regulation 5 to conduct a study that will establish the labour market efficiency and dynamics; prevailing economic situation; and a comprehensive job evaluation. This study informs the basis for review. The review is then communicated to the Cabinet Secretary

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responsible for matters relating to finance, the Judicial Service Commission, the Parliamentary Service Commission and the National and County Governments for inclusion in the subsequent budgetary estimates. The review is then implemented by Parliament in phases depending on the budgetary allocations approved by Parliament.

Therefore, before rendering its advice on the remuneration and allowance of public officers, the 2nd respondent is required by the law to engage in a rigorous exercise that determines the suitability of the proposed remuneration and allowances all in a bid to ensure the country's fiscal health is sustainable. It would be absurd to have the 2nd respondent, vested with ensuring the fiscal health of our country, demoted to a mere advice-minting body.

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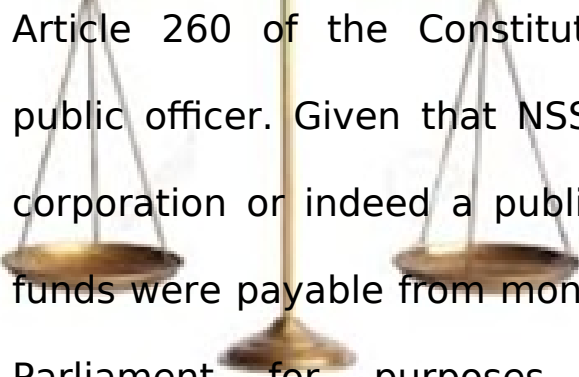
In the case of Muthuri & 4 others v Attorney General & 2 others (Petition 15 (E022) of 2021) [2023] KESC 52 (KLR), we upheld the Court of Appeal's decision in Teachers Service Commission (TSC) vs Kenya Union of Teachers (KNUT), Kenya Union of Post Primary Education Teachers (KUPPET), Salaries and Remuneration Commission (SRC) & Hon Attorney General (Supra) and held that, according to article 259(11) of the Constitution, the National Police Service Commission had to seek the advice of the 2nd respondent herein before determining the remuneration and benefits of the National Police Service, which advice was binding. Similarly, having established that the appellant was in public service and was under the jurisdiction of the 2nd respondent, it follows that the 2nd respondent's advice was binding on the appellant.

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The rationale is rather apparent since the 2nd respondent cannot reasonably discharge its constitutional obligations if its advice were merely a suggestion that one may opt to adhere to or not. Specifically, the 2nd respondent is tasked with ensuring that the total public compensation bill is fiscally sustainable, and this cannot reasonably be achieved without the attendant force of law. Indeed, the ELRC noted in para. 35 of its judgment that the 2nd respondent was formed to address the disparities in wages and salaries in public service, and the amount of revenue the Government was spending on the public wage bill at the expense of development and other essential programmes. As rightly held by the Court of Appeal in the Teachers Service Commission Case, a contrary finding would constitute going back to the pre-2010

Constitution era which would defeat the transformative constitutional dispensation we are under.

14. The Court of Appeal addressed the role of the Commission in *Salaries and Remuneration Commission v Kenya Union of Commercial, Food & Allied Workers & 2 Ors* (2025) KECA 402 (KLR), wherein it held:



Article 260 of the Constitution defined a public officer. Given that NSSF was a State corporation or indeed a public office whose funds were payable from money provided by Parliament for purposes of defraying expenses pursuant to (A)rticle 206(1)(b) of the Constitution, the 1st (R)espondent's members employed by NSSF and whose remuneration and emoluments were derived from such public funds were public officers whose salaries and emoluments were subject to the jurisdiction of the SRC under article

230(4)(b) of the Constitution and section 11 of the Salaries and Remunerations Commission Act.

15. What are the facts here?
16. The Respondent sought the advice of the Commission on 16 September 2015 with regard to the 2013 - 2017 Collective Bargaining Agreement.
17. The Commission advised the Respondent on 27 January 2016 to retain the terms of the then-existing Collective Bargaining Agreement.
18. On 13 May 2021, the Respondent again sought the advice of the Commission on the Collective Bargaining Agreement for the period 2021 - 2025. The Commission gave the advice through a letter dated 19 October 2021.
19. The Union filed a trade dispute with respect to the Collective Bargaining Agreement for 2013 - 2017.
20. When the Respondent forwarded the draft Collective Bargaining Agreement for 2021 - 2025, it did not incorporate the advice by the

Commission and a joint technical team was constituted.

21. Arising from the deliberations, the Commission requested the Respondent to obtain certain approvals, but the Respondent had not gone back to the Commission for the approvals.

22. The Commission, therefore, maintains that the advice it gave to the Respondent on 19 October 2021 still stands.

23. Just like the National Hospital Insurance Fund in the Supreme Court decision, the Respondent is in the public service and it is bound by the advice of the Commission when negotiating a Collective Bargaining Agreement.

24. The Union here and the Respondent cannot run away from the advice given by the Commission on 27 January 2016 and 19 October 2021.

Conclusion and Orders

25. In light of the above, the Cause herein is found without merit and is dismissed.


26. Because of the ongoing social partnership between the parties, each party to bear own costs.

Delivered virtually, dated and signed in Nairobi on this 20th day of November 2025.

EMPLOYMENT AND LABOUR RELATIONS COURT
Radido Stephen, MCI Arb
Judge

Appearances

For Claimant	Mr Nyumba, Industrial Relations Officer
For Respondent	Judith Karuirwa Ibeere, Advocate
For Interested Party	Ruth Bikambo, Advocate
Court Assistant	Wangu



NAIROBI