

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI

CBA NO. E196 OF 2024

(Before Hon. Lady Justice Agnes Kitiku Nzei)

**KENYA UNION OF COMMERCIAL
FOOD AND ALLIED WORKERS.....UNION**

VERSUS

NAKURU RURAL WATER & SANITATION CO. LTD..EMPLOYER

**SALARIES & REMUNERATION
COMMISSION1ST INTERESTED PARTY**

**CENTRAL PLANNING & PROJECTS MONITORING
DEPARTMENT OF THE MINISTRY OF
LABOUR & SOCIAL PROTECTION. ...2ND INTERESTED PARTY**

RULING

1. The application before me is the Applicant/Trade Union's Notice of Motion dated **17th July, 2024**. The Applicant seeks the following Orders:-

(a) *Spent.*

(b) *An order directing the 1st Interested Party to issue a letter of clearance approving registration of the*

Collective Bargaining Agreement between the Union and the Employer herein dated 16th November, 2023 to take effect from 1st January, 2023 for 42 months.

(c) An order directing the 2nd Interested Party to analyse and submit to this Court their comments on the Collective Bargaining Agreement dated 16th November; 2023 between the Union and the Employer.

(d) An order registering the Collective Bargaining Agreement between the Union and the Employer herein dated 16th November, 2023 and effective 1st January, 2023.

(e) An order entering the Collective Bargaining Agreement between the Union and the Employer herein dated 16th November, 2023 and effective 1st January, 2023 in the register of Collective Bargaining Agreements.

2. The application sets out on its face the grounds on which it is brought, and is anchored on the supporting affidavit of

Thomas Ochola sworn on 17th July, 2024. It is deponed in the said supporting affidavit, *inter alia*:-

- (a) that the Employer and the Trade Union have a valid Recognition Agreement dated 28th April, 2009 regulating the parties' relationship, pursuant to which several Collective Bargaining Agreements have been concluded.
- (b) that the Employer and the Union voluntarily, willingly and freely negotiated and signed a CBA dated 16th November, 2023, which was to take effect on 1st January, 2024, **for a period of 42 months**; and
- (c) that prior to, and during negotiations, the Employer involved the Salaries and Remuneration Commission (SRC) and sought advice.
- (d) that according to SRC Circular dated 14th October, 2019, it was the SRC's **(1st Interested Party's)** responsibility to give advice upon request, but failed to act as was required of them.
- (e) that the Employer engaged the SRC as was required of it, but the SRC was reluctant to offer their advice and guidance; and that on 23rd

November, 2023, the Applicant/Union forwarded the concluded CBA to the 2nd Interested Party herein pursuant to Section 60 of the Labour Relations Act, but which returned the same to the Union on 29th May, 2024.

- (f) that the Applicant/Union, vide a letter dated 20th June, 2024, forwarded the CBA to the 1st Interested Party (SRC) and requested them to issue a clearance letter, but which request was declined.
- (g) that by a letter dated 21st June, 2024, the 1st Interested Party (SRC) stated that the Employer could present the CBA to this Court, but did not issue a clearance letter.
- (h) that CBAs govern workers' terms and conditions of service, hence the need for due attention to ensure that workers are not subjected to suffering.

3. The Employer, **Nakuru Rural Water & Sanitation Co. Ltd**, responded to the foregoing application vide a replying affidavit of **Reuben K. Korir**, the Employer's Managing Director, sworn on 7th August, 2024. It is deponed in the said replying affidavit; ***inter-alia***:-

- (a) that the Employer and the Trade Union held in-depth negotiations which culminated in a CBA which was to take effect on 1st January, 2024.
- (b) that the Employer, being a Water Service Provider under the Water Act 2016 (WSP) providing water and sanitation services to the public, is required to conform to the guidelines issued by the 1st Interested Party (SRC) on 14th October, 2019 via its Circular referenced SRC/ADM/CIR/1/13 VOL.IV (28) with respect to Collective Bargaining Agreement Negotiations.
- (c) that throughout the said negotiations with the Union, the Employer engaged the 1st Interested Party (SRC) in conformity with the provided constitutional procedure and the directives issued in the said guidelines, and availed all the requisite documents to the 1st Interested Party without fail.
- (d) that the 1st Interested Party **later** provided the parameters for negotiations between the negotiating parties for the parties to finally conclude the negotiation and further apply for a clearance letter from it (the 1st Interested Party).

(e) that the 1st Interested Party **provided the parameters for the negotiating parties on 17th May, 2023, long after negotiations had been concluded and the agreement (CBA) freely executed.**

(f) that despite the (late) response by the 1st Interested Party, the Employer affirms that it **counter-checked** the agreement against the parameters provided, and ensured that all the outlined items had already been negotiated and agreed within the stated parameters; and that the 1st Interested Party's advice had been duly adhered to.

(g) that having diligently observed the 1st Interested Party's Constitutional role in the said negotiations and having complied with its advice, the duly executed Collective Bargaining Agreement (CBA) **is ripe for registration by the Court as envisaged under Section 60(1) of the Labour Relations Act 2007 and the Employment and Labour Relations Court Procedure Rules.**

(h) that the CBA is a contract like any other and, having been entered into freely without any undue influence, coercion and/or duress, and there being no objection whatsoever by either party to the agreed objects, it thus is binding between the parties herein.

4. On its part, the Salaries and Remuneration Commission (1st Interested Party) filed in Court a report dated 17th June, 2025 and titled **“Report and advice of the Salaries and Remuneration Commission on Collective Bargaining Agreement between Kenya Union of Commercial, Food and Allied Workers and Nakuru Water & Sanitation Co. Ltd for the period 2023 - 2026”**. The said 7 page report and advice, signed by the Commission’s Secretary/CEO, concludes as follows:-

*(i) Nakuru Rural Water and Sanitation is to subsequently negotiate with the trade union based on the parameters indicated in the Commission’s letter Ref. No. SRC/TS/18/VOL.1(159) **dated 17th May, 2024.***

- (ii) After negotiations, the Management of Nakuru Rural Water and Sanitation Company should submit the draft CBA to the Commission for issuance of a clearance letter enabling the registration of the CBA.*
- (iii) The Management of Nakuru Rural Water and Sanitation Company should then lodge the CBA for registration after obtaining the clearance letter from the Commission.*
- (iv) Nakuru Rural Water and Sanitation Company may seek for review of the Commission's decision on the proposed CBA which the Commission will consider on merit."*

5. The application was argued orally in Court on 22nd October, 2025 pursuant to the Court's directions in that regard.
6. Having considered the application, the affidavit sworn in support of the application, the Employer's replying affidavit and documents thereto annexed as well as the report filed by the 1st Interested Party, the single issue that falls for

determination, in my view, is whether the reliefs (orders) sought in the application can issue.

7. It is worthy noting that **the Employer concedes to the application, and blames the 1st Interested Party of not issuing guidance to the negotiating parties when such advice was sought by the Employer**, only giving the same long **after** the Collective Bargaining Agreement had been concluded and executed.
8. One of the documents annexed to the Employer's replying affidavit is a copy of the SRC's (1st Interested Party's) letter of advice to the Employer dated **17th May, 2024**, apparently responding to the Employer's letter dated **12th May, 2023** (more than a year earlier).
9. While appreciating the 1st Interested Party's (SRC's) Constitutional mandate set out in Articles 230(4) and 259(11) of the Constitution of Kenya 2010, that mandate, **which is administrative in nature**, must always be exercised expeditiously, efficiently, lawfully, reasonably and

in a procedurally fair manner as provided in **Article 47(1) of the Constitution of Kenya**, which states as follows:-

“(1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.”

10. The 1st Interested Party (SRC) did **not** act expeditiously, efficiently and reasonably by failing to give the advice and guidance sought on **12th May, 2023** expeditiously or within a reasonable time, **only responding to the Employer’s letter over a year later**. The 1st Interested Party has not given **any reason** for the **inordinate delay** involved pursuant to **Article 47(2) of the Constitution of Kenya 2010**. The proceedings herein could have been avoided had the 1st Interested Party discharged its Constitutional mandate expeditiously and efficiently.
11. Despite the foregoing **transgression** on the part of the 1st Interested Party, however, the Commission’s advice regarding the Collective Bargaining Agreement negotiated by the Trade Union/Applicant and the Employer **must** be adhered to by the negotiating parties; regardless of the fact

that the CBA is said to have been signed. It will have to be re-opened and re-negotiated to incorporate the SRC's **belated advice** given to the Employer, which is a public sector employer. The binding nature of the SRC's advice to public sector employers was stated by the Supreme Court of Kenya in **Petition No. E024 of 2024 (National Hospital Insurance Fund Management Board - vs - Kenya Union of Commercial Food and Allied Workers & Salaries & Remuneration Commission [2025] eKLR** as follows:-

“[100] However, in the instant case, there is no proviso barring the binding force of the 2nd Respondent’s advice. If anything, Regulation 21 of the SRC Regulations, 2013 provides that the 2nd Respondent’s advice concerning the remuneration and benefits of all other public officers will hold and will only be varied under the provisions of Article 259(11) of the Constitution. Therefore, from our exposition herein above, there cannot be any other rational

conclusion than that the advice of the 2nd Respondent was binding.

[101] As to the exact point in time when the Appellant was required to obtain the 2nd Appellant's advice, the relevant portion of the SRC Regulations, 2013 provides as follows:

18. Negotiations with Trade Unions

(2) The management of a Public Service organization with unionisable employees shall seek the advice of the Commission before the commencement of any collective bargaining process with the representative union on the suitability of the proposal of the Union.

(3) Where the collective bargaining process referred to in paragraph (2) is successful, the management shall, before the signing of the agreement, confirm the fiscal

suitability of the negotiated package with the Commission . . .

[102] It follows therefore, and we agree with the Court of Appeal, that the advice of the 2nd Respondent was binding upon the Appellant. In addition, the Appellant ought to have sought the 2nd Respondent's advice before completing the CBA negotiations with the 1st Respondent. It therefore follows, that any CBA entered between the Appellant and the 1st Respondent, absent the advice and approval of the 2nd Respondent prior to entering the said CBA, was of no legal consequence."

12. The foregoing decision of the Supreme Court speaks directly to the facts of the case herein, and I will therefore not belabour the point here. The Collective Bargaining Agreement signed by the Employer and the Trade Union on 16th November, 2023 **before** receiving the 1st Interested Party's advice on the fiscal suitability of the negotiated

package is of no legal consequence; and **cannot** be recognised and/or registered by this Court.

13. The Trade Union's Notice of Motion dated 17th July, 2024, which I preceded to set out at paragraphs 1 and 2 of this Ruling, cannot succeed, and is hereby **struck off** with no order as to costs.

14. The Employer and the Trade Union, having now received the 1st Interested Party's advice vide its letter dated **17th May, 2024** and the Report dated 17th June, 2025 and filed herein, **may** expeditiously re-negotiate the CBA, and adhere to the advice given by the 1st Interested Party (the Salaries and Remuneration Commission).

15. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS
28TH DAY OF NOVEMBER 2025**

AGNES KITIKU NZEI

JUDGE

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

Mr. Muunda for the Union

Miss Mwango for the Employer

Mr. Muthoni for the Interested Parties