



REPUBLIC OF KENYA



KENYA LAW
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**Sowanane & 62 others v Mediheal Group Limited & 16 others;
National Health Insurance Fund & 2 others (Garnishee) (Cause
E006 of 2024) [2025] KEELRC 1726 (KLR) (12 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1726 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE E006 OF 2024
AN MWAURE, J
JUNE 12, 2025**

BETWEEN

**PAWAN KUMAR SOWANANE 1ST CLAIMANT
SHEETAL KANARE 2ND CLAIMANT
MANOJ BAWANE 3RD CLAIMANT
DEEPAK VISHWAKARMA 4TH CLAIMANT
SHAIENDRA SINGH NAIK 5TH CLAIMANT
SANDEEP KUMAR SRIVAS 6TH CLAIMANT
MANISCH GULIA 7TH CLAIMANT
BALSRI MARAK 8TH CLAIMANT
JACOB ABRAHAM RURAM 9TH CLAIMANT
SUNJAY DHAR 10TH CLAIMANT
PALETI KRISHNA MURTHY CHOUDARY 11TH CLAIMANT
RAJEEV TAPULOI 12TH CLAIMANT
GIRIJA BALLAV MAHAPTRA 13TH CLAIMANT
CHANLAL SINGH 14TH CLAIMANT
VARUN SAXENA 15TH CLAIMANT
RACHNA JAIN 16TH CLAIMANT
SANKET JAIN 17TH CLAIMANT
DINESH SHARDA 18TH CLAIMANT**



RAHUL BHASKARRAO PATIL	19 TH CLAIMANT
RAJA HARISHCHAND	20 TH CLAIMANT
SATHISH RAVI	21 ST CLAIMANT
NIRMAL KUMAR NARSARIA	22 ND CLAIMANT
VIRAIN KUMAR	23 RD CLAIMANT
MUKESH KUMAR	24 TH CLAIMANT
DINESH KESAVAN	25 TH CLAIMANT
HIMANSHU VYAS	26 TH CLAIMANT
BABU YANGAAH	27 TH CLAIMANT
ANIT VETUEVELIL MARCOS	28 TH CLAIMANT
JOMINI GEORGE	29 TH CLAIMANT
JITTO VARGHESE	30 TH CLAIMANT
AMBIKA THIPPESWAMY	31 ST CLAIMANT
LINGARAJU RAMANA	32 ND CLAIMANT
AMANDEEP SING DHAMI	33 RD CLAIMANT
SASANTH SIVAN	34 TH CLAIMANT
ABRAHAM GEORGE	35 TH CLAIMANT
NIXON THANKACHAN	36 TH CLAIMANT
TINTU JOSEPH	37 TH CLAIMANT
RAKESH KUMAR AHIRWAR	38 TH CLAIMANT
SONAM SAXENA	39 TH CLAIMANT
SHEKHAR SUDAM POKALE	40 TH CLAIMANT
DIPALI ULHAS DUKARE	41 ST CLAIMANT
SUNEEL KUMAR KASUKURTHI	42 ND CLAIMANT
DEVENDER PAL SINGH	43 RD CLAIMANT
SAIF ALAM	44 TH CLAIMANT
RAMA KRISNA RAVURI	45 TH CLAIMANT
VIMALKUMAR DILIPHA PADHYAR	46 TH CLAIMANT
PERVEZ AHMED SIDIQI	47 TH CLAIMANT
MAHESH CHAND GUPTA	48 TH CLAIMANT
JIGNESHKUMAR OGHADBHAI AHIR	49 TH CLAIMANT
NAVEEN CHANDRA ACHARYA	50 TH CLAIMANT



BOKA NAGESHWAR RAO	51 ST CLAIMANT
AJAZ AHMAD	52 ND CLAIMANT
SANTOSH DEVARAJ	53 RD CLAIMANT
PARAG ASHOK PATIL	54 TH CLAIMANT
GEETAANJALI PARAG PATIL	55 TH CLAIMANT
RAMEESH RAVEENDRAN	56 TH CLAIMANT
KUT'T CHIRAVELI SURENDAN SURESH	57 TH CLAIMANT
ANU VARGHESE	58 TH CLAIMANT
ETTERIKUNNATH DEEPAK CHANDRAN	59 TH CLAIMANT
LIGI ANN ABRAHAM	60 TH CLAIMANT
KRIPAL KALLELIL BALANA	61 ST CLAIMANT
MOHEEN ABDALA KHADAR	62 ND CLAIMANT
SUBHASH CHANDRALAL	63 RD CLAIMANT

AND

MEDIHEAL GROUP LIMITED	1 ST RESPONDENT
MEDIHEAL DIAGNOSTICS AND FERTILITY CENTRE LIMITED	2 ND RESPONDENT
MEDIHEAL HOSPITAL(PARKLANDS) LIMITED	3 RD RESPONDENT
MEDIHEAL HOSPITAL(NAKURU)ANNEX LIMITED	4 TH RESPONDENT
MEDIHEAL HOSPITAL(EASTLEIGH) LIMITED	5 TH RESPONDENT
MEDIHEAL DOCTORS PLAZA ELDORET LIMITED	6 TH RESPONDENT
MEDIHEAL TOWN CLINIC ELDORET LIMITED	7 TH RESPONDENT
MEDIHEAL DIAGNOSTIC DIALYSIS & DAYCARE NAIROBI LTD	8 TH RESPONDENT
MEDIHEAL MINIMAL ACCESS SURGERY & DAYCARE CENTRE LTD	9 TH RESPONDENT
MEDIHEAL HOSPITAL AND FERTILITY CENTRE ELDORET	10 TH RESPONDENT
MEDIHEAL HOSPITAL AND FERTILITY CENTRE LTD ...	11 TH RESPONDENT
MEDIHEAL (NAKURU)COMPANY LIMITED	12 TH RESPONDENT
MEDIHEAL HOSPITAL NAKURU TOWN CLINIC	13 TH RESPONDENT
MEDIHEAL HOSPITAL AND FERTILITY CLINIC KAKAMEGA	14 TH RESPONDENT



**MEDIHEAL HOSPITAL AND FERTILITY CENTRE RWANDA 15TH
RESPONDENT**

SWARUP RANJANI MISHRA 16TH RESPONDENT

PALLAVI MISHRA 17TH RESPONDENT

AND

NATIONAL HEALTH INSURANCE FUND GARNISHEE

MEDICAL ADMINISTRATORS KENYA LIMITED GARNISHEE

MOI UNIVERSITY GARNISHEE

JUDGMENT

1. The Amended claim was filed on 8th April 2024 by 63 Claimants. Original Claimants claim was filed on 5th February 2024. The Claimants had authorised the 12th Claimant GIRIJA B. MAHAPATRA to represent them. There are 12 Respondents who are said to be employers of the Claimants.
2. The Claimants introduced themselves as medical professionals who were employed by Mediheal Group of Hospitals as expatriates. They had various contracts of employment.
3. Among the salient features of their contracts were: -
 - (i) The contracts would commence on the dates set out therein.
 - (ii) Compensation and benefits would be as per the contracts and Kenyan law would apply in case disputes arose.
 - (iii) The Mediheal Group of Hospitals was the employer.
4. The Respondents owe the Claimants salary arrears amounting to Rupees 186,069,164. Attempts to recover the salary arrears according to the Claimants have been in vain.
5. The Claimants aver that the 1st Respondent and 15th Respondents have made several written promises to pay but the same has not been actualised.
6. The Claimants attempted to invoke an arbitration clause in their contract but the Respondents did not respond and hence the Claimants had to file the suit in court.
7. The claimants are making the following prayers: -
 - (a) Declaration that failure to pay the Claimants' salary amounted to constructive dismissal.
 - (b) Respondents to jointly and severally pay the Claimants their salary arrears amounting to Rupees 186,069,164.
 - (c) The Respondents to jointly and severally pay the Claimants 12 months equivalent of their salary amounting to Rupees.134,460,000/=.
 - (d) Respondents to jointly and severally pay to the Claimants equivalent of three months' salary in lieu of notice Rupees.33,615,000.



- (e) In the alternative the Respondents both jointly and severally to pay the Claimants. Rupees.135,360,000/= being damages for unfair labour practice.
 - (f) Interest on the sums awarded to prayers b, c, d and e above until full payment.
 - (g) Costs of the suit to be awarded.
 - (h) Certificate of service to be issued to the Claimants.
 - (i) The Claimant be at liberty to execute the judgment of this Honourable court prior to taxing costs if so awarded.
8. The court noted Respondents were served with Applications and the statement of claim by the affidavit dated 20th February 2024. The Claimant stated that the Respondents' neither acknowledged nor responded to the service email.
 9. The 12th Claimant Girija Ballav Mahapatra with the express authority of the other 62 Claimants gave his viva voce evidence in court on 20th February 2025.
He basically adopted his witness statement dated 9th April 2024 as his evidence in chief. He also produced a bundle of documents dated 5th April 2024 as his exhibits in support of this case and further bundles dated 9th April 2024. A further bundle of documents are dated 18th July 2024. They were marked as exhibits 1 - 25.
 10. The Respondents did file a response to the claim dated 10th July 2024 and denied the averments by the Claimants. They however did not present a witness in court to testify on their behalf. They did not file their submissions.
 11. The Claimants filed their submissions dated 27th February 2025. The court considered the said submissions critically.

Analysis and determination.

12. The court has considered the pleadings, viva voce evidence adduced in court, as well as the Claimants submissions. The Claimants claim for outstanding salaries. The appointment letters of the Claimants are produced in court and in the application vide Notice of Motion dated 5th February 2024 they are marked GBM2.
13. The Respondents have made several promises to repay the salaries owed but this has not been actualised. A letter dated 27th October 2024 the chairman Dr. Mishra wrote to the expatriates employees thanking them for "their patience in waiting for the payments of their salaries."
The Respondents claimed they were waiting for the lender to advance some money to meet such obligations.
14. On 27th October 2023 Advocate Ndisi Munge & Company wrote to the Claimants asking for indulgence of 20 days to compute the dues and allow release of the funds.
15. Still another letter by MCKAY advocates they retaliated their clients were negotiating with a lender to advance the money to clear their outstanding liabilities. They requested for thirty days indulgence.
16. Clearly the salary arrears were never settled despite the various promises. The Claimants then attempted to purpose appointment of an arbitrator as per their letter of 27th November 2023. It would appear the Respondents did not respond as pertains to appointment of an arbitrator.



17. CLARB went ahead and attempted to appoint an arbitrator but the same does not seem to have borne any fruits since some of the contracts did not have arbitration clause.
18. In all the above, it is quite evident the Claimants were willing to resolve this dispute through Alternative dispute mechanisms but met resistance from the Respondent.
19. The law of employment and especially Section 17(I) of *Employment Act* provide that an employer shall pay the entire amount of the wages earned by or payable to an employee in respect of work done by the employees in pursuance to a contract of service directly in the currency of Kenya. Sections 18(2) of the said *Employment Act* states that salaries shall be deemed due at the end of each month. In the case of Kiboko -Vs- Osteria Group (Kenya) Limited the court held that: -

“The duty of an employer to compensate an employee for services rendered as a candid role in any employment.”
20. The Claimants aver that they were forced to resign because of nonpayment of their salaries. Those are as listed herein – 2nd, 4th, 12th, 14th, 15th, 17th, 19th, 20th, 21st, 22nd, 23rd, 24th, 25th, 26th, 30th, 34th, 37th, 38th, 42nd, 43rd, 44th, 46th, 49th, 51st, 54th, 55th, 56th, 57th, 58th, 61st and 62nd. There are several letters of resignations and all indicate the Claimants were forced to resign because of non-payment of their salaries. They all affirmed they were constructively terminated.
21. The Respondents failure to pay the Claimants their salaries gone for months was truly unfair labour practice and that forced the Claimants to resign. In the well-known case of Coca Cola East Africa -VS- Maria Kagai Ligaga 2015(eKLR) set out the legal principles of constructive termination which can be summoned as conduct of an employer must be fundamental or significant breach going to the root of the contract of employment which shows the employer no longer intends to be bound by one or more of the essential terms of the contract.
22. Failure to pay the employees’ salary constantly for several months go to the root of the contract and it leaves such an employee vulnerable and embarrassed. The court holds that such behavior would push any employee to resign as he is not getting the fruit of their labour.
23. The court also noted that the Respondent did not oppose the claim as he only filed a response but did not support it in evidence in court. Neither did he file any submissions.
24. In the case of Mutua -VS- Buxton Hospital Mombasa Ltd (2024) KEELRC 1552 the court held: -

“Failure by a Respondent/Defendant to call evidence in proof of matters pleaded by him/her leaves the pleadings as being mere pages of unsubstantiated statements of fact, with no legal weight and/or import.”
25. The court finds that the Claimants have proved there are their unpaid salary arrears and they have established by their letters of appointment that they were employees of the Respondents.
26. The court is satisfied the Claimants hereto were employees of the Respondent. Further the Respondent withheld and failed to pay them salaries forcing them to resign albeit involuntarily. Todate there is no evidence that Claimants salary have been settled.
27. The Claimants in the considered view of this Honourable court were constructively terminated from their employment once their salaries were withheld for some months.
28. The court holds that the Claimants are entitled to their salary arrears as tabulated in the amended Memorandum of Claim dated 8th April 2024 and all amounting to 186,069,164 Indian Rupees. The



Respondents are held jointly and severally liable to settle the aforesaid salary arrears as converted to Kenya shillings.

29. They are also to pay salary of 3 months in lieu of notice as per their letters of appointment which provided for 3 months' notice amounting to Indian Rupees 33,615,000 and 6 months equivalent for general damages for unfair termination due to constructive dismissal, being Indian Rupees 62,680,000.
30. Costs of the suit are awarded to the Claimants.
32. They are also awarded interest on court rates at 14% per annum from date of this judgment till full payment.
33. Certificate of service to be issued 30 days from today's date.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 12TH DAY OF JUNE, 2025.

ANNA NGIBUINI MWAURE

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of **Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

