



**Kenya National Union of Nurses v Busia County Public Service Board & 5 others
(Cause 001 of 2023) [2024] KEELRC 489 (KLR) (22 February 2024) (Judgment)**

Neutral citation: [2024] KEELRC 489 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 001 OF 2023
S RADIDO, J
FEBRUARY 22, 2024**

BETWEEN

KENYA NATIONAL UNION OF NURSES CLAIMANT

AND

BUSIA COUNTY PUBLIC SERVICE BOARD 1ST RESPONDENT

MIGORI COUNTY PUBLIC SERVICE BOARD 2ND RESPONDENT

SIAYA COUNTY PUBLIC SERVICE BOARD 3RD RESPONDENT

KAKAMEGA COUNTY PUBLIC SERVICE BOARD 4TH RESPONDENT

KISUMU COUNTY PUBLIC SERVICE BOARD 5TH RESPONDENT

NAKURU COUNTY PUBLIC SERVICE BOARD 6TH RESPONDENT

JUDGMENT

1. The Kenya National Union of Nurses (the Union) sued the 6 County Public Service Boards before the Court sitting in Bungoma on 13 July 2022, alleging breach of contract (non-payment of salaries and emoluments for the months of December 2020 to February 2021).
2. On 22 May 2023, the Court sitting in Bungoma noted that the dispute with the County Public Service Boards of Busia and Kakamega having been settled out of Court, it had no jurisdiction over the claims against the County Public Service Boards of Migori, Kisumu and Siaya. The Court transferred the file to this Court.
3. On 27 June 2023, this Court directed the Union to serve the County Public Service Boards of Migori, Siaya and Kisumu and file appropriate affidavits of service.
4. However, on 10 August 2023, the dispute was referred to mediation but in light of previous directions, it was referred back to the Court.



5. When the file was mentioned for further directions on 25 September 2023 and 14 November 2023, the Union and a representative of the County Public Service Board, Migori informed the Court that they had reached an agreement and the Court directed that a consent be filed.
6. The Court also directed that the dispute against the County Public Service Boards of Siaya and Kisumu be taken on 23 January 2024.
7. The hearing against these Boards proceeded as scheduled and the Branch Secretaries for Siaya and Kisumu testified.
8. The Union filed its submissions on 12 February 2024.
9. The Court has considered the pleadings, evidence and submissions.
10. The Union and the County Public Service Boards of Siaya and Kisumu have recognition agreements.
11. A dispute arose between the parties herein and the Union reported trade disputes to the Cabinet Secretary for Labour on 7 July 2021. The Cabinet Secretary appointed different Conciliators who met the parties to resolve the disputes in terms of Part VIII of the *Labour Relations Act*.
12. In a report dated 4 November 2021, the Conciliator found that the County Public Service Board, Siaya had not paid some employees their remuneration for January and February 2021.
13. The Conciliator recommended that the employees be paid the remuneration. The Union produced in Court a schedule showing the employees who had not been paid.
14. With respect to the County Public Service Board, Kisumu, the Conciliator issued a report dated 3 December 2021. According to the report the nurses had gone on strike because the Board had failed to provide them with protective masks and because the *Occupational Safety and Health Act* required employers to ensure a safe and healthy work environment, the employees should not have been penalised.
15. The Conciliator recommended the payment of wages for January and February 2021.
16. The Union produced in Court a schedule of the affected nurses.
17. The County Public Service Boards of Siaya and Kisumu were served severally with court process but they opted not to participate or defend themselves in the Cause for reasons best known to themselves.
18. The Union's case was not controverted.
19. In light of the above the Court finds that the Union has proved its case to the required standard.

Conclusion and Orders

20. Flowing from the foregoing finds and declares that:
 - i. The withholding of the Union's members' salaries for January and February 2021 by the County Public Service Boards of Siaya and Kisumu was an unfair labour practice and in breach of contract.
 - ii. The Court awards and orders the County Public Service Boards of Siaya and Kisumu to pay the employees listed in the respective schedules the withheld remuneration set against their respective names in the schedules.



21. If the payment is not effected within 45 days, the awards to attract interest at court rates from the date of judgment.
22. The parties are in an ongoing social partnership so each party to bear own costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 22ND DAY OF FEBRUARY 2024.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Union Mr. Kinoti, Industrial Relations Officer

Respondents did not appear/participate

Court Assistants Chrispo/Chemwolo

