



Mike & 7 others v Salaries and Remuneration Commission & 41 others; Kenya Medical Practitioners, Pharmacists and Dentists' Union & 77 others (Interested Parties) (Petition E003, E005, E042 (NRB) & E051 of 2024 & Cause E244 (NRB) of 2024 (Consolidated)) [2024] KEELRC 2506 (KLR) (17 October 2024) (Judgment)

Neutral citation: [2024] KEELRC 2506 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET**

**PETITION E003, E005, E042 (NRB) & E051 OF 2024
& CAUSE E244 (NRB) OF 2024 (CONSOLIDATED)**

MA ONYANGO, J

OCTOBER 17, 2024

**IN THE MATTER OF THREATENED VIOLATION OF
RIGHTS OR FUNDAMENTAL FREEDOMS UNDER ARTICLES
27,41(5) AND 47(1) & 2 OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF THREATENED VIOLATION OF FUNCTIONS UNDER
ARTICLES 230 (4) (B) & (5) (D) AND 234 OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF ARTICLE 35 OF THE CONSTITUTION
OF KENYA**

AND

**IN THE MATTER OF SECTIONS 12, 13 (C), (D), 15 OF
THE SALARIES AND REMUNERATION COMMISSION ACT**

AND

**IN THE MATTER OF SECTIONS 4, 5, 6, 8, 9, 10, 12 & 17 OF THE SALARIES
AND REMUNERATION COMMISSION (REMUNERATION AND
BENEFITS OF STATE AND PUBLIC OFFICERS) REGULATIONS, 2013**

BETWEEN

DR MICHENI MIKE 1ST PETITIONER
DR MOHAMED ABDI 2ND PETITIONER
DR ANGELA MASIGA 3RD PETITIONER



AND

THE SALARIES AND REMUNERATION COMMISSION RESPONDENT

AND

KENYA MEDICAL PRACTITIONERS, PHARMACISTS AND DENTISTS'
UNION INTERESTED PARTY

CABINET SECRETARY, MINISTRY OF HEALTH INTERESTED PARTY

PRINCIPAL SECRETARY, STATE DEPARTMENT FOR PUBLIC HEALTH AND
PROFESSIONAL STANDARDS INTERESTED PARTY

PUBLIC SERVICE COMMISSION INTERESTED PARTY

AS CONSOLIDATED WITH

PETITION E005 OF 2024

BETWEEN

CHESANG VALLERIE 1ST PETITIONER

DANIEL MUTEMBEI 2ND PETITIONER

AND

KENYA MEDICAL PRACTITIONERS PHARMACIST AND DENTIST UNION
& 5 OTHERS & 5 OTHERS & 5 OTHERS & 5 OTHERS & 5 OTHERS & 5
OTHERS & 5 OTHERS & 5 OTHERS & 5 OTHERS & 5 OTHERS & 5 OTHERS
& 5 OTHERS & 5 OTHERS RESPONDENT

AND

COUNCIL OF GOVERNORS INTERESTED PARTY

TEACHERS SERVICE COMMISSION INTERESTED PARTY

AS CONSOLIDATED WITH

PETITION E042 (NRB) OF 2024

BETWEEN

KENYA HEALTH PROFESSIONALS SOCIETY PETITIONER

AND

CS MINISTRY OF HEALTH 1ST RESPONDENT

SALARIES AND REMUNERATION COMMISSION 2ND RESPONDENT

THE HONOURABLE ATTORNEY GENERAL 3RD RESPONDENT

AS CONSOLIDATED WITH

PETITION E051 OF 2024



BETWEEN

VINCENT OYIENGO PETITIONER

AND

KENYATTA UNIVERSITY TEACHING, REFERRAL & RESEARCH HOSPITAL
& 30 OTHERS & 30 OTHERS & 30 OTHERS & 30 OTHERS & 30 OTHERS &
30 OTHERS & 30 OTHERS & 30 OTHERS & 30 OTHERS & 30 OTHERS & 30
OTHERS & 30 OTHERS & 30 OTHERS RESPONDENT

AND

KENYA MEDICAL PRACTITIONERS PHARMACISTS & DENTISTS BOARD
& 70 OTHERS & 70 OTHERS & 70 OTHERS & 70 OTHERS & 70 OTHERS &
70 OTHERS & 70 OTHERS & 70 OTHERS & 70 OTHERS & 70 OTHERS & 70
OTHERS & 70 OTHERS & 70 OTHERS INTERESTED PARTY

AS CONSOLIDATED WITH

CAUSE E244 (NRB) OF 2024

BETWEEN

KENYA NATIONAL UNION OF NURSES PETITIONER

AND

SALARIES AND REMUNERATION COMMISSION RESPONDENT

AND

MINISTRY OF HEALTH INTERESTED PARTY

The Salaries and Remuneration Commission acted within its mandate to address fiscal constraints by reducing medical interns' stipends.

The consolidated petition challenged the Salaries and Remuneration Commission's (SRC) decision to revise healthcare interns' stipends to Kshs. 35,000–70,000, citing fiscal constraints. The petitioners alleged violations of articles 27, 41, and 230 of the Constitution, arguing the reduction in stipends was discriminatory, ignored binding CBAs, and lacked stakeholder consultation. The court held that SRC acted within its article 230 mandate, balancing fiscal realities with public finance principles. It found no unconstitutional discrimination or breach of CBAs, noting SRC's advice required Ministry-led harmonization. The court dismissed the petition, urging dialogue between stakeholders to address concerns, with no costs awarded to any party.

Reported by John Ribia

Constitutional Law – fundamental rights and freedoms – right to equality and freedom from discriminating – right to fair administrative action – right to fair labour practices and collective bargaining - reduction of stipends of medical interns – claims that it was a violation of constitutional rights – claims that the decision was fiscally responsible in align with the constitutional principles of public finance management - whether the disparity in stipends between the 2023 cohort of interns, who were paid Kshs. 206,000, and the 2024 cohort, whose stipends were reduced to the approved range of Kshs. 35,000 to Kshs. 70,000, amounted to discrimination - whether decision to reduce the stipends of medical inters from, Kshs. 206,000, the 2023 cohort of interns, to Kshs. 35,000 to Kshs.



70,000, for the 2024 cohort, was a violation of the intern's right to fair administrative action - Constitution of Kenya 2010, articles 10, 20, 21, 22, 24, 27, 28, 29, 30, 32, 36, 37, 41(5), 47, 50, 159(11); 165(3)(d)(ii), 174, 230, 232, 233, 234, 258, and 260); Salaries and Remuneration Commission (SRC) Act (Cap 412D) sections 11(a), 12(2), 13, 15, and 17; Salaries and Remuneration Commission (Remuneration and Benefits of State and Public Officers) Regulations (cap 412D Sub Leg) regulations 4, 5, 6, 8, 9, 10, 12, 17, 26, and 27; Labour Relations Act (Cap 233) sections 49, 59, 60, and 61; Medical Practitioners And Dentists Act (Cap 253) section 6; Public Service Commission Regulations (2022) regulation 45(6).

Labour Law - internship - reduction of stipends for medical interns by the Salaries and Remuneration Commission (SRC) - whether the Salaries and Remuneration Commission's advice, which approved a stipend range of Kshs. 35,000 to Kshs. 70,000 for healthcare interns under the Healthcare Internship Programme, contravened existing Collective Bargaining Agreements (CBAs) and undermined the rights to fair labour practices and collective bargaining – whether the reduction in stipends from Kshs. 206,000 to the range of Kshs. 35,000 to Kshs. 70,000, was justified as a necessary fiscal measure under the Public Finance Management Act and aligned with constitutional principles of public finance management - Constitution of Kenya 2010, articles 10, 20, 21, 22, 24, 27, 28, 29, 30, 32, 36, 37, 41(5), 47, 50, 159(11); 165(3)(d)(ii), 174, 230, 232, 233, 234, 258, and 260); Salaries and Remuneration Commission (SRC) Act (Cap 412D) sections 11(a), 12(2), 13, 15, and 17; Salaries and Remuneration Commission (Remuneration and Benefits of State and Public Officers) Regulations (cap 412D Sub Leg) regulations 4, 5, 6, 8, 9, 10, 12, 17, 26, and 27; Labour Relations Act (Cap 233) sections 49, 59, 60, and 61; Medical Practitioners And Dentists Act (Cap 253) section 6; Public Service Commission Regulations (2022) regulation 45(6).

Constitutional Law – national values and principles – public participation – decision by the Salaries and Remuneration Commission to lower medical intern stipends - whether the Salaries and Remuneration Commission and the Ministry of Health failed in their obligation to engage stakeholders, including unions and professional associations, before arriving at the decision to lower the stipends of medical interns – Constitution of Kenya 2010, article 10.

Constitutional Law – constitutional bodies – mandates – mandates of the Salaries and Remuneration Commission vis-à-vis the Public Service Commission - decision to determine remuneration of health officers - whether the Salaries and Remuneration Commission exceeded its constitutional mandate by determining remuneration for healthcare interns without involving the Public Service Commission (PSC), which had the mandate to oversee the terms of service for public officers – Constitution of Kenya 2010, articles 10, 20, 21, 22, 24, 27, 28, 29, 30, 32, 36, 37, 41(5), 47, 50, 159(11); 165(3)(d)(ii), 174, 230, 232, 233, 234, 258, and 260); Salaries and Remuneration Commission (SRC) Act (Cap 412D) sections 11(a), 12(2), 13, 15, and 17; Salaries and Remuneration Commission (Remuneration and Benefits of State and Public Officers) Regulations (cap 412D Sub Leg) regulations 4, 5, 6, 8, 9, 10, 12, 17, 26, and 27; Labour Relations Act (Cap 233) sections 49, 59, 60, and 61; Medical Practitioners And Dentists Act (Cap 253) section 6; Public Service Commission Regulations (2022) regulation 45(6).

Statutes – interpretation of statutes – interpretation of section 61 of the Labour Relations Act - powers of the Cabinet Secretary Ministry of Health vis-à-vis the powers of the Salaries and Remuneration Commission - whether section 61 of the Labour Relations Act, which empowered the Cabinet Secretary to make regulations on terms of employment for public sector employees, infringed on the constitutional mandates of the Public Service Commission and the Salaries and Remuneration Commission - Labour Relations Act (Cap 233) section 61.

Labour Law – public officers – categorization – medical interns - whether medical interns in public service qualified as public officers – Constitution of Kenya, article 260; Salaries and Remuneration Commission (SRC) Act (Cap 412D) sections 11(a), 12(2), 13, 15, and 17; Salaries and Remuneration Commission (Remuneration and Benefits of State and Public Officers) Regulations (cap 412D Sub Leg) regulations 4, 5, 6, 8, 9, 10, 12, 17, 26, and 27; Labour Relations Act (Cap 233) sections 49, 59, 60, and 61; Medical Practitioners And Dentists Act (Cap 253) section 6; Public Service Commission Regulations (2022) regulation 45(6).



Words and Phrases – discrimination – definition - the effect of a law or established practice that confers privileges on a certain class because of race, age sex, nationality, religion or hardship; differential treatment especially a failure to treat all persons equally when no reasonable distinction can be found between those favoured and those not favoured - Black's Law Dictionary, 9th Edition.

Brief facts

The petition arose from a decision by the Salaries and Remuneration Commission (SRC) communicated through a letter dated March 13, 2024, advising on the remuneration of healthcare interns under the Healthcare Internship Programme. The advice set the stipends for various categories of interns within a range of Kshs. 35,000 to Kshs. 70,000, citing fiscal sustainability concerns.

The petitioners, consisting of healthcare interns, unions, and professional bodies, challenged the decision, alleging that it violated constitutional provisions on equality, non-discrimination, fair labour practices, and collective bargaining. They argued that previous cohorts of interns were paid significantly higher stipends under existing Collective Bargaining Agreements (CBAs), with some receiving up to Kshs. 206,000. The petitioners claimed the reduction in stipends was implemented without stakeholder consultation and was discriminatory, unfair, and contrary to established norms.

The SRC defended its decision, stating it was necessitated by budgetary constraints and aimed at ensuring fiscal sustainability. It maintained that the advice aligned with its constitutional mandate under article 230 of the Constitution, as it considered public finance principles and equitable distribution of limited resources. The Ministry of Health and other respondents supported the SRC's position, citing the need for policy adjustments due to increasing numbers of healthcare graduates and limited funding.

The matter consolidated several petitions addressing similar grievances related to the SRC's decision and its broader implications for the internship programme in Kenya.

Issues

- i. Whether the disparity in stipends between the 2023 cohort of medical interns, who were paid Kshs. 206,000, and the 2024 cohort, whose stipends were reduced to the approved range of Kshs. 35,000 to Kshs. 70,000, amounted to discrimination.
- ii. Whether decision to reduce the stipends of medical interns from, Kshs. 206,000, for the 2023 cohort of interns, to Kshs. 35,000 to Kshs. 70,000, for the 2024 cohort, was a violation of the intern's right to fair administrative action.
- iii. Whether the Salaries and Remuneration Commission's advice, which approved a stipend range of Kshs. 35,000 to Kshs. 70,000 for healthcare interns under the Healthcare Internship Programme, contravened existing Collective Bargaining Agreements (CBAs) and undermined the rights to fair labour practices and collective bargaining.
- iv. Whether the Salaries and Remuneration Commission and the Ministry of Health failed in their obligation to engage stakeholders, including unions and professional associations, before arriving at the decision to lower the stipends of medical interns.
- v. Whether the reduction in stipends from Kshs. 206,000 to the range of Kshs. 35,000 to Kshs. 70,000, was justified as a necessary fiscal measure under the Public Finance Management Act and aligned with constitutional principles of public finance management.
- vi. Whether the Salaries and Remuneration Commission exceeded its constitutional mandate by determining remuneration for healthcare interns without involving the Public Service Commission (PSC), which had the mandate to oversee the terms of service for public officers.
- vii. Whether section 61 of the Labour Relations Act, which empowered the Cabinet Secretary to make regulations on terms of employment for public sector employees, infringed on the constitutional mandates of the Public Service Commission and the Salaries and Remuneration Commission.
- viii. Whether medical interns in public service qualified as public officers under article 260 of the Constitution.



Held

1. The Salaries and Remuneration Commission was established under article 230 of the Constitution and its powers as enumerated under article 230(4) were to set and regularly review the remuneration and benefits of all State officers; and advise the national and county governments on the remuneration and benefits of all other public officers.
2. Section 12 of the SRC Act provided for two further principles which SRC was required to be guided by in its mandate in addition to those set out under article 230(5) of the Constitution. The twin principles were equal remuneration for work of equal value and that SRC shall take into account the recommendations of previous commissions established to inquire into the matter of remuneration in the public service.
3. Advice given by SRC on the stipend for interns under the Healthcare Internship Programme was necessitated by the request from the Cabinet Secretary on the basis that the available budgetary allocation for Healthcare Internship Programme was insufficient to sustain stipend payments at the rates enjoyed by previous cohorts. The SRC's advice was well founded and in line with sections 7, 26 and 27 of the Salaries and Remuneration Commission (Remuneration and Benefits of State and Public Officers) Regulations.
4. According to the SRC Act and regulations, there was no requirement for mandatory consultation under sections 7, 26 and 27 of the Regulations. SRC did not recommend the review of the Collective Bargaining Agreement (CBA). It was the responsibility of the Ministry, after obtaining the advice of SRC, to initiate discussions regarding the review of the CBA.
5. The Public Finance Management Act, 2012 and the Public Finance Management (National Government) Regulations, 2015 prohibited the incurring of expenditure that had not been factored into the budget without approval. In the instant case the amount approved in the budget for payment of interns was not sufficient to accommodate payment of stipend for the medical interns expected to be placed in February, 2024. Sections 4, 5, 6, 8, 9, 10, 12 and 17 of the Salaries and Remuneration Commission (Remuneration and Benefits of State and Public Officers) Regulations related to the periodical reviews carried out by SRC every 4 years and to job evaluations. There was a specific request to SRC based on budgetary constraints which did not fall under the said sections.
6. The process of arriving at the review communicated by SRC's letter dated March 13, 2024 was in violation of articles 27, 41(5), 230(5) and 249 of the Constitution as read with sections 12, 13, and 15 of the Salaries and Remuneration Commission Act and sections 4, 5, 6, 8, 9, 10, 12 and 17 of the Salaries and Remuneration Commission (Remuneration and Benefits of State and Public Officers) Regulations.
7. Differential treatment did not necessarily lead to discrimination. There was a conflict between the CBA and the Revised Scheme of Service for Medical Officers, Dental Officers and Pharmacists approved by the Public Service Commission in September, 2016 which abolished the position of Intern from the Scheme of Service. Although the Scheme of Service was dated September, 2016 and the CBA was negotiated on June 30, 2017, the issue of the Scheme of Service was not mentioned in the CBA.
8. The respondent stated that after the revision of the scheme of service, internship ceased to be a position in the public service and that change provided intelligible differentia for disparate treatment between cohorts serving internship under the different policy dispensation. That however did not explain why the parties still went ahead to provide in the CBA that the interns shall be deemed to be in Job Group L.
9. The stipend was however negotiated and entrenched in the CBA for the period commencing July 1, 2017. The CBA provided that it applied to all unionisable employees, both members of the union who paid membership subscriptions and to non-members who under the CBA were obliged to pay agency fees as provided under section 49 of the Labour Relations Act.
10. Based on the CBA the interns would have a legitimate expectation that they would be paid the rates provided in the CBA. All the interns recruited at the same time were paid at the same rate. What the



petitioners complained of was that the impact of the impugned SRC letter would result in one cohort being paid less than what previous cohorts of interns were paid. Discrimination was any distinction, exclusion or preference made on the basis of differences to persons or group of persons based on such considerations as race, colour, sex, religious beliefs, political persuasion or any such attributes that had real or potential effects of nullifying or impairing equality of opportunity or treatment between two persons or groups.

11. Not every distinction or differentiation amounted to discrimination unless the different treatment was without objective or reasonable justification or proportionality between the aim sought to be attained and the means employed to achieve the aim. The reduced stipend was necessitated by the budget constraints following advice from Treasury. It was necessary because the funds available were not sufficient to pay the new cohort at the same rate as the previous cohort.
12. The public Finance Management Act prohibited any expenditure in excess of approved budgetary allocation. The only options available to the Ministry of Health in the circumstances were either to take less interns or reduce the stipend. SRC advice was to reduce the stipend in order to accommodate all the interns within the available budgetary allocation rather than take on less interns and pay the rates in the CBA.
13. Based on the unique circumstances under which the advice of SRC on stipends payable to health interns there was a negative difference in the amount of stipend paid between the old and new cohorts of interns but that was justifiable based on budgetary reasons. That did not constitute prohibited discrimination under article 27 of the Constitution.
14. Article 41 of the Constitution of Kenya provided for the right of every worker to form, join or participate in the activities and programmes of a trade union and that every trade union had the right to engage in collective bargaining. The petitioners had not complained that any intern had been prevented from exercising their rights under article 41 by virtue of the CBA negotiated by the Kenya Medical Practitioners, Dentists and Pharmacists Union.
15. There were policies that provided for payment of stipends for interns under the Public Service Commission, one of which was the Internship Policy for Healthcare Professions. The provision for stipend for interns in the CBA between the Kenya Medical Practitioners, Dentists and Pharmacists Union was not discriminative.
16. The petitioner had not demonstrated how the respondents had violated constitutional provisions. The issues raised in Petition No. E051 were addressed in Nairobi Petition No. E032 of 2024 as acknowledged by the petitioner. The petitioner submitted on matters of implementation of the orders in the said petition. The suit did not meet the threshold for a constitutional petition.
17. With respect to section 61 of the Labour Relations Act, there was no conflict between the mandate of the Minister under the section and the role or powers of the Public Service Commission. The Minister's role under the section was very specifically provided for. It was to make regulations and not to set the terms and conditions of service as PSC did. The section further stated that the power was exercised only where the employees were not covered by any CBA. The interpretation by the petitioners was not in conformity with the wording in the section. There was no conflict between section 61 of the Labour Relations Act and the role of Public Service Commission.

Petition dismissed.

Orders

Each party was to bear their own costs.

Citations

Cases

Kenya

1. *Anarita Karimi Njeru v Republic* Criminal Appeal 4 of 1979; [1979] KECA 12 (KLR) - (Applied)



2. *Nubian Rights Forum & 2 others v Attorney General & 6 others; Child Welfare Society & 9 others (Interested Parties)* Petition 56, 58 & 59 of 2019 (Consolidated); [2020] KEHC 8772 (KLR) - (Explained)
3. *Omolo, Christopher O v Severin Sea Lodge* Cause 235 of 2014; [2016] KEELRC 504 (KLR) - (Explained)
4. *Trusted Society of Human Rights Alliance v Matemo & 3 others* Petition 12 of 2013; [2015] KESC 26 (KLR) - (Applied)

Texts

Garner, BA., (Ed) (2009), *Black's Law Dictionary* St Paul Minnesota: West Group 9th Edn

Statutes

Kenya

1. Clinical Officers (Training, Registration and Licensing) Act (cap 253E) In general - (Cited)
2. Constitution of Kenya articles 10; 20; 21; 22; 24; 27; 28; 29; 30; 32; 36; 37; 41(5); 47; 50; 159(11); 165(3)(d)(ii); 174; 230; 232; 233; 234; 258; 260- (Interpreted)
3. Employment Act (cap 266) sections 2, 5 - (Interpreted)
4. Fair Administrative Action Act (cap 7L) section 4(3)- (Interpreted)
5. Labour Relations Act (cap 233) sections 49, 59, 60, 61 - (Interpreted)
6. Medical Practitioners and Dentists Act (cap 253) section 6 - (Interpreted)
7. Pharmacy And Poisons Act (cap 244) In general - (Cited)
8. Public Finance Management (National Government) Regulations (cap 412A Sub Leg) In general - (Cited)
9. Public Finance Management Act (cap 412A) In general- (Cited)
10. Public Service Commission Regulations, 2022 (cap 185 Sub Leg) regulation 45(6) - (Interpreted)
11. Salaries and Remuneration Commission (Remuneration and Benefits of State and Public Officers) Regulations (cap 412D Sub Leg) sections 4, 5, 6, 8, 9, 10, 12, 17, 26, 27- (Interpreted)
12. Salaries and Remuneration Commission (SRC) Act (cap 412D) sections 11(a); 12(2); 13 (c), (d); 15; 17 - (Interpreted)

Instruments

International Labour Organization Convention 98 on Right to Organise and Collective Bargaining Convention 1949 article 4

Advocates

None Mentioned

JUDGMENT

Introduction

1. By a letter dated March 13, 2024, Reference No SRC/TS/19(111) the Salaries and Remuneration Commission (SRC) a constitutional Commission established under article 230 of the *Constitution*, advised the Cabinet Secretary, Ministry of Health (the Ministry), on stipends to be paid to interns on the Healthcare Internship Programme. The advice was in response to requests sent to the SRC by the Ministry through letters dated 5th and March 11, 2024. The letter provoked several suits.
2. Petition No E003 of 2024 and Petition E005 of 2024 were filed in Eldoret while 3 other suits were filed in Nairobi and transferred to be heard together with Eldoret Petition E003 of 2024 in view of the common issues in the said suits. This judgment is thus in respect of Eldoret ELRC Petition No E003 of 2024, Eldoret ELRC Petition No E005 of 2024, Nairobi ELRC Petition No E042 of 2024,



Nairobi ELRC Cause No E244 of 2024, and Nairobi Petition No E051 of 2024. The suits which were filed separately at different times were heard together in view of the fact that the issue of the letter from SRC cut across all of them. The suits also involved similar respondents, with the SRC featuring in all the suits either as a respondent or interested party.

3. The suits were heard under Petition No E003 of 2024.
4. The petitioners in the first suit Petition No E003 of 2024 are 3 healthcare interns. They have sued the SRC, as the respondent and named several interested parties.
5. The 1st interested party is Kenya Medical Practitioners, Pharmacists and Dentists registered as such by the Registrar of Trade Unions under the *Labor Relations Act*, representing unionisable employees being Medical Practitioners, Pharmacists and Dentists in National and County Governments.
6. The 2nd and 3rd Interested Parties are the Cabinet Secretary and the Principal Secretary of State Department for Public Health and Professional Standards in the Ministry of Health respectively.
7. The 4th interested party is the Public Service Commission established under article 233 of the *Constitution*.

The petitioners' Case in Eldoret Petition No. E003 of 2024

8. Vide the Petition dated April 16, 2024, the petitioners challenge the validity of the respondent's letter dated March 13, 2024, Reference No SRC/TS/19(111) advising the Cabinet Secretary, Ministry of Health on stipends for interns under the Healthcare Internship Programme.
9. The petitioners' case is that on March 11, 2024 the 2nd interested party, through its letter REF: SDPH&PS.5/2/19, wrote to the respondent herein making reference to a previous letter that is yet to be made public REF: SDPH&PS.5/2/18 of March 5, 2024 requesting the respondent to rationalize and determine the stipend that would be payable to Healthcare Professional Interns.
10. The petitioners aver that the 2nd interested party in its letter proposed to the respondent a range of stipend for the respondent's consideration in determining the rates payable as shown in the table below.

S/NO	Interns Category	Range Amount Per Month (kshs)
1.	Medical Officer Intern	50,000--70,000
2.	Pharmacist Intern	50,000- - 70,000
3.	Dental Officer Intern	50,000--70,000
4.	Nursing Officer Intern (Degree)	35,000--50,000
5.	Clinical Officer (BSCCM) Intern	35,000--50,000
6.	Clinical Officer (Diploma Holders) Interns	25,000--35,000

11. It is the petitioners' case that while making the aforesaid proposals for consideration by the respondent:



- i. The respondent and 2nd interested party did not conduct any market survey nor any scientific research to justify its said proposal;
 - ii. The respondent and 2nd interested party did not consider the stipend range that has been paid to interns previously;
 - iii. The respondent and 2nd interested party did not invite for representation from the 1st interested party or any other professional organization in the health industry;
 - iv. The respondent and 2nd interested party did not demonstrate the justification/need to depart from the stipend range that has been paid to the interns previously; and,
 - v. The respondent and 2nd interested party ignored the existence of a duly negotiated, executed and registered Collective Bargaining Agreement between the Ministry of Health on the one hand, the 1st interested party on the other hand and the county governments.
12. The petitioners state that on March 13, 2024, the respondent through its letter REF: SRC/TS/19(111), responded to the 2nd interested party's letters REF: SDPH & PS.5/2/18 of March 5, 2024 and REF: SDPH & PS.5/2/19 of March 11, 2024.
13. According to the petitioners, the respondent in its response informed the Interested that it held its 593rd meeting on March 12, 2024 where a stipend range for healthcare interns was approved subject to affordability and fiscal sustainability as listed hereunder:

Internship Cadre	StIpend Per Month (kshs)	
	MIN	MAX
Medical Officer Intern	47,000	70,000
Pharmacist Intern	47,000	70,000/-
Dental Officer Intern	47,000	70,000
Nursing Officer Intern (Degree)	35,000	50,000
Clinical Officer (BSCCM) Interns	35,000	50,000
Clinical Officer (Diploma Holders) Interns	27,000	35,000

14. The petitioners aver that following the respondent's letter of March 13, 2024 REF: SRC/TS/19(111), the 3rd interested party began issuing internship placement letters to the Medical Officer interns with a monthly "stipend" of Kshs70,000.
15. According to the petitioners, the range of stipend approved by the respondent for medical officer interns is contrary to its powers as set out in article 230(4)(b) of the *Constitution* as read with section 12(2) of the *Salaries and Remuneration Commission (SRC) Act* and sections 4, 5, 6, 8, 9, 10, 12 & 17 of



the *Salaries and Remuneration Commission (Remuneration and Benefits of State and Public Officers) Regulations, 2013*.

16. Based on the foregoing, the petitioners seek reliefs in the following terms:
- i. A declaration be and is hereby made that the respondent's advice of March 13, 2024 REF: SRC/TS/19(111) setting the remuneration for healthcare professional interns at a maximum of Kshs 70,000 is contrary to articles 27, 41(5) and 230(4)(b) and (5)(d) of the *Constitution* as read with sections 4, 5, 6, 8, 9, 10, 12 and 17 of the *Salaries and Remuneration Commission (Remuneration and Benefits of State and Public Officers) Regulations, 2013* and article 4 of the *Right to Organise and Collective Bargaining Convention, 1949*.
 - ii. An order do issue quashing the respondent's advice of 13th March, 2024 REF: SRC/TS/19(111) and subsequent letters of employment issued by the 2nd and 3rd interested parties, which, together, set the remuneration for healthcare professional interns at a maximum of Ksh 70,000 for being contrary to articles 27, 41(5) and 230(4)(b) and (5) (d) of the *Constitution* as read with sections 12, 13(c),(d), 15 of the *Salaries and Remuneration Commission Act* and sections 4, 5, 6, 8, 9, 10, 12 and 17 of the *Salaries and Remuneration Commission (Remuneration and Benefits of State and Public Officers) Regulations, 2013* and article 4 of the *Right to Organise and Collective Bargaining Convention, 1949*; and
 - iii. An order do issue quashing the respondent's advice of March 13, 2024 REF: SRC/TS/19(111) and subsequent letters of employment issued by the 2nd and 3rd interested parties, which, together, set the remuneration for healthcare professional interns at a maximum of Kshs 70,000 for being discriminatory compared to the remuneration package available to the last cohort of interns which is Kshs 206,000

Petitioner's Case in Eldoret Petition No. E005 of 2024

17. The petitioners, Chesang Vallerie and Daniel Mutembei are interns. Chesang Vallerie is an Intern Teacher engaged by Teachers Service Commission which has been joined to the Petition as the 2nd interested party while Daniel Mutembei is undertaking pupillage/internship at a private law firm in fulfilment of the requirements for admission as an advocate of the High Court of Kenya. They have named the Kenya Medical Practitioners, Pharmacists and Dentists Union (KMPPD Union) as 1st respondent; the Ministry of Health (the Ministry) as 2nd respondent; the Cabinet Secretary Ministry of Health (CS) as 3rd respondent; the Principal Secretary Ministry of Health (PS) as 4th respondent; the Attorney General (AG) as 5th respondent; the Public Service Commission (PSC) as 6th respondent and Salaries and Remuneration Commission (SRC) as 7th respondent. In addition, the petitioners joined the Council of Governors (CoG) as 1st interested party and Teachers Service Commission (TSC) as 2nd interested party. They seek the following reliefs:
- i. A declaration be and is hereby issued that interns in the Public Service including medical interns are public officers as prescribed under article 260 of the *Constitution* of Kenya and regulation 45(6) of the *Public Service Commission Regulations* and other related laws.
 - ii. A declaration be and is hereby issued that the power to set and fix terms and conditions of service for public officers including medical interns is bestowed in the Public Service Commission, and the related Commissions, under *the Constitution* on the binding advice of the Salaries and Remuneration Commission. Therefore, while negotiating any collective bargaining agreement between any public entity or state organ or body or Public Officer and any Trade Union including the 1st, 2nd, 3rd and 4th respondents, deference on the terms and



conditions of service for such public officers the subject of the Collective Bargaining shall be had to the Public Service Commission and the related Commissions on the advice of the 7th respondent. In this case, the respondents were bound to defer to the Public Service Commission on the terms and conditions of Service for the Medical Interns before executing the Bargaining Agreement effective July 1, 2017.

- iii. A declaration be and is hereby issued that the Collective Bargaining Agreement with effect on 1st July 2017, in as far as it purported to grant disproportionate terms and conditions in favour of Medical Interns as compared with other graduate Interns whose internships are statutorily mandated, the said Collective Bargaining Agreement is discriminative, and unfair thus contrary to the dictates of articles 10, 27, 41, 232 of *the Constitution* and is therefore invalid.
- iv. A declaration be and is hereby issued that the advisory by the Salaries and Remuneration Commission under article 230 of the *Constitution* is mandatory and must be enforced by the public entity to whom it applies and in no way can the said advice be disregarded by the relevant parties.
- v. A declaration be and is hereby issued that all Collective Bargaining Agreements in the Public Service must align with the Salaries and Remuneration Commissions directives issued pursuant to its mandate under article 230 of *the Constitution* of Kenya and article 159(11) of the *Constitution of Kenya*.
- vi. A declaration be and is hereby issued that the Public Service Commission has failed in the discharge of its mandate under article 234 of the *Constitution*, the Public Service Act and the Regulations made thereunder in as far as it relates to harmonization of the terms and conditions of employment for all interns in the public service and in particular relating to the medical interns.
- vii. A declaration be and is hereby issued that the Salaries and Remuneration Commission Bargaining Agreement that infringed on the rights of the petitioners, and other interns in the public service, other than medical interns, to equality and non-discrimination under article 10, 27 and 41 of the *Constitution*.
- viii. A declaration be and is hereby issued by way of a structural interdict that whereas the Public Service Commission has failed to discharge its mandate under article 234 of the *Constitution of Kenya*, the Public Service Act, and the Regulations made thereunder, in relation to the terms and conditions of service for Medical Interns; and whereas the Honourable Court is empowered under article 165(3)(d)(ii) of the *Constitution of Kenya* to determine whether any act or omission of a State organ is inconsistent with or in contravention of the *Constitution*; and whereas the honourable court finds that the Commission has failed to ensure fair and equitable treatment of Interns in the public service, as mandated by the *Constitution* and relevant legislation the Commission is hereby directed to take immediate steps to rectify its failure.
- ix. A declaration be and is hereby issued that to the extent that section 61 of the [Labour Relations Act](#) provides that the Cabinet Secretary may, after consultations with the Board, make regulations establishing machinery for determining terms and conditions of employment for any category of employees in the public sector where there is no Collective Bargaining Agreement and that the terms and conditions of employment determined under subsection (1) shall have the same effect as a collective agreement registered under this Part and may be enforced as if it were a collective agreement, the same is unconstitutional as it bestows on the



Cabinet Secretary the powers and functions of the Public Service Commission under articles 234 and those of the Salaries and Remuneration Commission under article 230.

18. It is the averment of the petitioners that there are various laws that require certain professions to undergo mandatory internship among them medical practitioners, dentists, pharmacists, clinical officers, nurses, architects, engineers, quantity surveyors, advocates, veterinary surgeons and accountants. It is their averment that interns undertaking internship at government institutions are deemed to be public officers for the duration of internship and are subject to the prevailing code of conduct for public officers to which they are attached. That there has been disparate treatment of interns by relevant authorities who have subjected them to different terms and conditions of service including remuneration and benefits.
19. The petitioners aver that medical interns have enjoyed favourable terms and conditions of service compared to their peers in the public sector. That a collective bargaining agreement between the 1st respondent and the Government through the Ministry of Health represented by the 2nd and 3rd respondents awarded the interns a basic salary of between Kshs. 44,989 - Kshs. 56,263, Home Allowance of Kshs. 28,000, Emergency Call Allowance of Kshs. 66,000, Commuter allowance of Kshs. 6,000, Non-practice Allowance of Kshs. 12,000, Extraneous allowance of Kshs. 30,000, Risk Allowance of Kshs. 20,000 and leave allowance payable once a year. This brought the total remuneration and benefits accruing to a medical intern a minimum of Kshs. 201,589 plus Kshs. 6000 leave allowance payable once. They aver that other comparable interns are paid Kshs. 25,000. That this has subjected the other interns to discrimination.
20. The petitioners aver that the Public Service Commission which has the mandate to promote the values and principles under articles 10 and 232 of the *Constitution* has been relegated in the collective bargaining process leading to the differential treatment.
21. The petitioners aver that the SRC has the mandate to advise the government on the remuneration of all state officers to ensure parity. The petitioners aver that the collective bargaining agreement between the respondents offends article 10(2)(a), (b), (c), and (e) of the *Constitution*, articles 20, 21, 24, 27, 28, 41, 230 and 232 of the *Constitution*.
22. The petitioners further aver that section 60 and 61 of the *Labour Relations Act* are unconstitutional for bestowing upon the Cabinet Secretary for Labour the functions of the Public Service Commission under article 230 of the *Constitution* and that the Public Service Commission, the SRC and the Ministry of Health have failed in their mandate to honour the *Constitution*.

The case of the Petitioner in Nairobi Petition No. E042 of 2024

23. The petitioner in this petition, Kenya Health Professionals Society, seeks the following orders against the Cabinet Secretary, Ministry of Health (1st respondent), Salaries and Remuneration Commission (2nd respondent) and the Attorney General (3rd respondent):
 - i. A declaration that the respondents herein have violated the petitioner's members' constitutional rights to human dignity, equality, equal protection of the law, and protection from discrimination.
 - ii. A declaration that the 1st respondent's failure to post and pay the petitioner's member interns stipend while posting and paying other interns of other cadres of healthcare is discriminatory and unconstitutional.



- iii. An order of certiorari quashing the 2nd respondent's advisory and/or circular dated March 13, 2024 on payment of stipend to only a select cadre of healthcare workers to the exclusion of others.
 - iv. An order compelling the 1st respondent to immediately commence the process of posting and paying stipends to all healthcare workers from all the healthcare cadres.
 - v. An order of mandamus compelling the 1st respondent herein to pay the stipend of the petitioner's members interning in various public health facilities.
 - vi. An order that the said interns be posted to various health facilities upon the completion of their internships just like the other interns in the other cadres.
 - vii. The cost of this petition be borne by the respondents
24. The petitioner describes itself as an umbrella body comprising of 16 health professional associations and societies whose aim is to be the voice of professionals within the health sector comprising of the association of medical engineers of Kenya, association of public health officers, association of medical records officers Kenya, association of Kenya medical laboratory scientific officers, Kenya society of physiotherapists, Kenya occupational therapists association, Kenya dental technology association, Kenya community nutrition association, Kenya plaster technicians association, Kenya pharmaceutical association, Kenya medical social workers association, national association of orthopedic technology, nutritionist association of Kenya, Oral health association Kenya, Society of radiography, and Kenya association of health administrators.
25. It is the case of the petitioner that the Government has failed to recognize and reward its members in spite of the critical and significant role they play in promoting and protecting the health of Kenyans, especially during the COVID-19 pandemic when some of its members tragically succumbed to infections in the line of duty. The petitioner further avers that its members have been discriminated especially the interns under its member associations and societies who have been subjected to differential treatment compared with other interns in the health sector. That the interns have been subjected to doing internship on voluntary basis while others are paid stipends.
26. The petitioner avers that the 1st respondent has violated the constitutional rights and fundamental freedoms of its members to equal protection of the law, equality, dignity, and protection from discrimination.

The Claimant's case in Nairobi Cause No E244 of 2024

27. The claimant, Kenya National Union of Nurses sued Salaries and Remuneration Commission and named the Ministry of Health as interested party. It seeks orders that:
- i. An order be and is hereby issued directing the respondent to retain the stipend for Nursing Officer Interns (Degree) as provided in the Revised Scheme of Service for Nursing Personnel 2014 that designate Nursing Officer Interns (Degree) at Job Group K.
 - ii. An order be and is hereby issued quashing the respondent's Letter of REF No SRC/TS/19(111) and dated March 13, 2024 conveying the commission's advice on stipend for Nursing Officer Intern (Degree).
 - iii. An Order directing the respondent to pay any difference in salary and allowances for Nursing Interns who have been posted that is below the job group K for Nursing Officer I/Intern as



provided in the Revised Scheme of Service for Nursing Personnel 2014 and the same to be computed with the assistance of the commissioner for Labour.

- iv. An Order for damages at court rate.
28. In the Statement of Claim the Claimant avers that to fulfil the legal requirements for registration by the Nursing Council of Kenya graduate nurses are required to undergo a one-year internship programme under the Ministry of Health. That by letter dated March 13, 2024 the respondent advised the Ministry of Health to reduce the stipend or remuneration for nursing intern degree holders from Kshs 105,000 in Job Group K to a minimum of Kshs 35,000 and maximum of Kshs 50,000 which action amounted to unfair labour practice as employee review should be incremental.
29. The Claimant avers that the revised scheme of service for nursing personnel dated May 2014 approved by the Public Service Commission designated nursing officer interns in Job Group K and the nursing interns have been earning a stipend equivalent to the salary and allowances similar to that of registered nurses at employed by the Government at Job Group K. The Claimant avers that SRC's letter dated March 13, 2024 amounts to rewriting the Scheme of Service without stakeholder engagement which is unlawful.
30. The claimant avers that SRC has encroached on the mandate of PSC which has delegated human resource functions for health care workers to the Ministry of Health, by disregarding the scheme of service on the designation of nursing officer interns.
31. The claimant states that it has a recognition agreement with the Ministry of Health/National Government to represent nurses on terms of service.

Nairobi Petition No E051 of 2024

32. In this suit the petitioner Vincent Oyiengo sued Kenyatta University Teaching, Referral and Research Hospital and 30 others seeking for orders as follows:
 - i. A declaration that the fundamental rights and freedoms as encapsulated and guaranteed in articles 10, 27, 28, 29, 30, 32, 36, 37, 41, 47, 50, 174 and 232 of *the Constitution of Kenya, 2010* have been derogated, contravened and infringed upon by the respondents, 5th, 7th, 8th and 9th to 71st interested parties;
 - ii. A declaration that circulars, guidelines, letters or policies issued by the 5th and 7th interested party on 11th and March 13, 2024 are invalid, irregular, illegal and unconstitutional as they are in breach of the registered collective bargaining agreement, employment laws and international labour principles.
 - iii. A declaration that there has been a breach of the registered collective bargaining agreement by the 4th to 31st respondents, 5th, 7th and 9th to 71st interested parties;
 - iv. A declaration that the [Legal Notice No. 269 of 2021](#) published and gazetted by the 5th and 8th Interested Parties is invalid, irregular, illegal and unconstitutional for lack of adequate public participation and stakeholder involvement.
 - v. A declaration that the actions and decisions taken by the respondents and likely to be taken by the 5th, 9th to 71st interested parties to issue show cause letters, remove employees from payroll, initiate salary stoppage, initiate disciplinary action, issue dismissal and termination letters in the course of a continuing industrial action are ultra vires, illegal, illegitimate, unconstitutional



and results to entrenchment of industrial relations disharmony and intensification of labour disputes.

- vi. A declaration that the actions and decisions taken by the respondents and likely to be taken by the 5th, 9th to 71st interested parties to recruit foreign doctors and strikebreakers violates the right of employees to go on strike and right to have their labour issues and disputes expediently resolved and results to entrenchment of industrial relations disharmony and intensification of labour disputes.
 - vii. A declaration be and is hereby issued to the respondents, 5th, 9th to 71st interested parties administrations that failure to remit union check off deductions to the 1st interested party is a violation of the constitutional right to fair labour practices.
 - viii. An order of prohibition be and is hereby issued restraining the respondents and the 5th, 9th to 71st interested parties from initiating disciplinary action to the petitioner and members of the 1st interested party as long as there exists unsettled labour and trade disputes pending before courts and conclusion of planned conciliations.
 - ix. An order of mandamus be and is hereby issued to the respondents, 4th, 5th, 7th, 9th to 71st Interested Parties to harmonize and regularize all terms of engagement of employees to the most favourable terms principle as elaborated in the registered collective bargaining agreement and as per the employment laws.
 - x. An order of mandamus be and is hereby issued to the 4th, 5th and 7th Interested Parties to set a national job grading and remuneration standard in the country in order to promote industrial harmony in the health sector.
 - xi. An order of mandamus be and is hereby issued to the 5th and 8th interested parties, together with stakeholders, to publish and gazette, clear and measurable national and counties healthcare public and private facility health care workers staffing standards in the promotion of realization of the right to healthcare as balanced with the right to fair labour practices.
 - xii. An order of mandamus be and is hereby issued to the respondents 5th, 7th, 9th to 71st interested parties administrations to immediately remit union check off deductions to the 1st interested party.
 - xiii. An order of mandamus be and is hereby issued to the respondents 5th, 7th, 9th to 71st interested parties to comply with all the terms of the existing and registered collective bargaining-agreement and employment laws.
 - xiv. An order of the court to adopt the implementation matrix and conciliation report of 2022 to February 2024 as part of judgment to settle ongoing labour dispute.
33. The Kenya Medical Practitioners, Dentists and Pharmacists Union, the Public Service Commission, The Ministry of Health and the Salaries and Remuneration Commission are named as the 1st, 4th, 5th and 7th Interested Parties among 71 interested parties who include all the County Governments.
 34. The petitioner states that he is a medical doctor by profession and he presents this petition on his own behalf and on behalf of other Kenyans and medical practitioners.
 35. It is the petitioner's case that the respondents and the 5th, 7th, 9th to 71st Interested Parties have violated the rights of the Petitioner and members of the 1st interested party to human dignity, protection of the law, protection against forced labour, right to freedom of association, right to fair labour practices, right to fair hearing.



The Respondent's Case

36. SRC, respondent in Eldoret Petition E003 of 2024, Eldoret E005 of 2024, Nairobi Petition No E042 of 2024 and Nairobi Cause E244 and interested party in Petition E051 of 2024 opposes the petitions and Claim through the various Replying Affidavits sworn by its Chief Executive Officer and Commission Secretary, Anne R Gitau.
37. She asserts that article 230(4) confers upon the SRC the mandate to set and regularly review the remuneration and benefits of all state officers while section 11(a) of the SRC Act confers on the respondent the power and function to inquire into and advice on the salaries and remuneration to be paid out of public funds.
38. According to the deponent, the respondent in the exercise of its powers and functions is required under article 230 (5) of *the Constitution* and section 12 of the SRC Act, to take into consideration, the need to ensure that the total public compensation bill is fiscally sustainable; the need to ensure that the public services are able to attract and retain the skills required to execute their functions; and the need to recognize productivity and performance; transparency and fairness; and equal pay to persons for work of equal value.
39. It is the respondent's case that in the healthcare sector, internship is designed to allow graduates to enhance their professionalism and gain career knowledge through hands-on training for a prescribed period of time after which they become qualified to be registered and issued with licenses to practice.
40. The respondent avers that in Kenya, the *Medical Practitioners and Dentists Act*, the *Pharmacy and Poisons Act*, *Clinical Officers (Training, Registration and Licensing) Act* and the Nurses and Midwives Act require medical and dental graduates, pharmacy graduates, clinicians (both degree and diploma holders), and Nursing graduates to undergo mandatory internship training before qualifying for registration by their respective professional bodies.
41. The respondent states that the Ministry of Health, the 2nd interested party, has developed and adopted the Internship Policy for Health Care professionals of February, 2020. This policy framework provides, inter alia, the rationale, overall goal and objectives of the healthcare internship programme.
42. It is further the respondent's case that the *Medical Practitioners and Dentists (Training, Assessment, and Registration) Rules*, 2022, require all medical and dental graduates to undergo a mandatory 12-month internship programme at a government approved internship training centre where they work under trained supervision.
43. It is therefore the respondent's contention that after completion of the mandatory 12-month internship, the medical and dental graduates are issued with internship completion certificates and subject to satisfying the requirements of good moral standing, they become eligible for full registration as either medical or dental practitioners in line with section 6 of the *Medical Practitioners and Dentists Act*.
44. The respondent contends that the mandatory 12-month internship program is not a guarantee of employment in the government healthcare system upon completion. This, according to the respondent is because after fulfilling the internship requirement and obtaining registration and licensure, the newly registered doctors, dentists and pharmacists are free to pursue job opportunities in either the public sector or the private healthcare industry. That the government is under no obligation to automatically absorb or hire these professionals into its workforce following the conclusion of their internship.



45. Regarding the Revised Scheme of Service for Medical Officers, Dental Officers and Pharmacists, the respondent states that Clause 6 of that Revised Scheme of Service specifies that entry point into the scheme for the position of Medical officer, Dental officer and Pharmacist at Job Group 'M' shall be by direct appointment.
46. According to the respondent, since Medical, Dental and Pharmacy graduates on the mandatory internship have not yet fulfilled the legal requirements for registration under the [Medical Practitioners and Dentists Act](#) as either Medical and Dental Practitioners or Pharmacists, they do not meet the necessary qualifications for appointment to the position of Medical or Dental Officers or Pharmacists at Job Group 'M' under the revised scheme of service.
47. It is thus the respondent's case that the revised Scheme of Service cannot be applied to medical, dental and pharmacy graduates on mandatory internship, as they are not part of the cadres and grades defined within the scheme.
48. The respondent contends that Medical/Dental officers and Pharmacists at job group 'M' perform the specified duties and responsibilities outlined in the revised scheme of service, while medical, dental and pharmacy graduates on the mandatory internship work under close supervision and guidance, primarily to gain practical experience and enhance their clinical competencies. As such, the duties and work performed by these two groups cannot be considered equal in value or scope.
49. It is therefore the respondent's case that the allegation that medical, dental and pharmacy graduates on the mandatory internship perform similar tasks and therefore work of equal value with Medical/Dental officers and Pharmacists at job group 'M' is unfounded, as their roles, levels of responsibility, and the nature of their work diverge significantly.
50. It is also stated that any issues of professional negligence or malpractice that may arise from their clinical work during the internship period are attributable to their supervisors and the healthcare facility providing the internship training, not the interns themselves. The main role of the interns is to learn through practical hands-on experience while being closely monitored and instructed by their supervisors, who ultimately bear professional responsibility for the actions of the interns during this training phase.
51. Additionally, the respondent avers that comparing the rates to other graduate cadres who must complete a mandatory internship prior to professional certification is highly relevant and imperative. These other cadres face essentially identical circumstances; an internship period that is obligatory and a prerequisite requirement before they can obtain certification in their respective professions.
52. The respondent appreciated that with regard to the healthcare internship programme, it advised on generally higher rates compared to other intern cadres given the uniqueness of the environment that they operate in during their internship training period.
53. There were several other responses through replying affidavits which in sum reiterate the position of SRC.
54. The cases were canvassed by way of written submissions which the parties highlighted on June 27, 2024.

The Submissions

55. Mr Juma, counsel for the petitioners in Petition No E003 of 2024, highlighted his submissions dated June 16, 2024. He submitted that the respondent's circular dated March 13, 2024 offends the provisions of article 27 of the *Constitution*.



56. Mr Juma further submitted that since the year 2017, the medical officer/healthcare interns have been remunerated in accordance with the CBA which was agreed, executed and filed between the 1st interested party, the 2nd interested party and the county governments. Counsel submitted that the last cohort of interns, who were recruited in July, 2023 were paid Kshs 206,000 as provided in the CBA yet they were doing the same work with the newly recruited cohort of interns that are to be paid the impugned remuneration of Kshs 70,000.
57. Mr Juma submitted that the respondent's decision to depart from the norm by remunerating the interns contrary to what is provided for in the CBA is not only haphazard but also discriminatory to the current cohort of interns.
58. The petitioners' counsel submitted that the respondent and the 1st interested party allude that the petitioners should take a pay cut because they are the reason for the budgetary wage bill from Treasury. They submit that this move is discriminatory.
59. Counsel for the petitioners further submitted that the SRC Circular dated March 13, 2023 infringes on article 41 of the *Constitution* on the basis that there exists a Collective Bargaining Agreement between the 1st interested party and its members which informs the salary of Kshs 206,000 to interns which has been in place for 7 years.
60. It is submitted that by unilaterally reviewing the salary of interns, the respondent took away the rights of workers to engage in Collective Bargaining Agreement which right has been enjoyed for the last seven years.
61. Counsel Juma also faulted the respondent's decision on the basis that there were no consultations before the decision to reduce the salaries of interns was reached. The petitioners submitted that article 47 and section 4(3) of the *Fair Administrative Action Act* require parties to be informed and to make representation before an administrative decision is taken.
62. The petitioners also submitted that the respondent did not consider the provisions of section 17 of the *SRC Act* in reviewing the CBA in place between the 1st interested party and its members.
63. As to the issue raised by the respondent that this petition is not ripe because the petitioners are interns and not employees, the petitioners submitted that section 2 of the *Employment Act* defines interns as employees and further, that article 22 and 258 of the *Constitution* gives locus to anyone whose rights are infringed to go to court. The case of Mumo Matemu was cited in support of this position.
64. Mr Kinoti representing the Kenya National Union of Nurses in Cause No E244 of 2024 in his submissions stated that according to the scheme of service in place, the salary for intern nurses is Kshs 106,000 but the respondent in its circular reduced the same to between Kshs 47,000 and Kshs. 35,000.
65. Mr. Kinoti submitted that the circular dated March 13, 2024 by the respondent should be quashed on the basis that there was no stakeholder's engagement.
66. In his submissions, the Claimant's counsel maintained that the scheme of service includes intern nurses and as such they are employees.
67. Mr Washika, Counsel for the interested party in Petition No E003 of 2024 echoed the submissions of counsel for the petitioners, Mr Juma. According to Mr Washika, section 17 of the *SRC Act* provides the process to be followed before a CBA is reviewed and that most importantly, the respondent has set up guidelines and procedures to be followed. That in reaching its decision leading to the circular dated March 13, 2024, the respondent did not follow the laid down procedure.



68. It is further submitted that the 2nd schedule to the SRC Act required the commission to maintain minutes of its meetings and that in this case, no such minutes have been submitted to court to show that the commission was properly constituted and deliberated.
69. On the issue of discrimination, the Mr. Washika disputed the averment by the respondent that interns are not employees and maintained that the petitioners' employment had crystalized as per the advertisement by the Ministry of Health confirming placement of interns.
70. Counsel urged the court to find merit in the instant petition and to award the petitioners and Interested Parties costs on the argument that the instant petition is not a public interest litigation.
71. Mr. Sitienei submitted on behalf of SRC, the respondent in Petition E003 of 2024 that prior to issuing its advice on May 13, 2024, it took into account the constitutional principle of the need to ensure that the total public compensation bill is fiscally sustainable and that as advised by the National Treasury vide its letters of October 9, 2023 and 1 February 3, 2024, that the current stipend rates payable under the health internship programme are neither affordable nor fiscally sustainable in wake of the increased number of healthcare professional graduates.
72. Mr Sitienei further submitted that the mandatory internship positions for the six healthcare professional cadres are not recognized job roles within the public service, nor are they provided for in the revised Scheme of Service approved to the Public Service Commission. Counsel submitted that internships are temporary training programs not formal job positions accounted for in the revised Scheme of Service approved by the Public Service Commission.
73. It was his submission that there was a scheme of service that existed prior to 2016. That the internship for medical, dental and pharmacy was part of the scheme of service. He submitted that there has been a fundamental change where the position of interns ceased to be a position in the public service. It was his submission that as per the policy documents that govern internships, interns are not graded within the scheme of service because they are not qualified for formal employment but to gain experience.
74. On the issue whether legitimate expectation counsel for the respondent submitted that the circumstances have changed fundamentally, that the cohort of 2016 and those being taken in now are under different systems. He relied on the case of Deepak vs Punjab University.
75. On the process taken, it is submitted that the fact that a request was made and received in two days does not mean that there were no discussions.
76. Mr Wahome, Counsel for SRC in E005 of 2024 and in E244 of 2024 submitted that the issues in Petition No E003 of 2024 have been substantially addressed in Petition No E037 as consolidated with E033 and E036 and the same is thus res judicata.
77. It was also submitted that the matter before the court are anchored on article 258 of *the Constitution* and are thus Public interest litigation in which orders of costs should not issue.
78. State Counsel Odongo appeared on behalf of the 2nd and 3rd Interested Parties in Petition E003 of 2024. Counsel raised several issues for court's determination.
79. The first issue raised is whether KMPDU and KNUN have the authority to represent the interests of medical graduates on internship. According to 2nd and 3rd Interested parties, the principle of representation is conferred only to those who have attained union membership as stated in the case of *Christopher O Omolo vs Severin Sea Lodge* (2016) eKLR. The 2nd and 3rd interested party maintained that the interns have not been posted and therefore there is no contract between the interns and the



- Ministry of Health. It was therefore submitted that the two unions have no capacity to represent medical interns.
80. The second issue as framed by the 2nd and 3rd interested parties is whether medical interns are public officers. They argued that an intern does not occupy any known public office and that as such, an intern is not a public officer.
81. While responding to the issue raised by the petitioners that the respondent did not engage stakeholders before arriving at the decision that gave rise to the circular dated March 13, 2024, Counsel Odongo submitted that the request for advice is an administrative task of the Ministry provided for under article 230 and that as such, the request is a procedural constitutional requirement which does not require stakeholder requirement. It was further submitted that regulation 18 of the SRC regulations requires that in doing its work, SRC should not negotiate with trade unions as negotiations would compromise its independence under article 249.
82. Regarding the issue raised by the petitioners that SRC violated its own statute and that its subsequent advice has no justification, Counsel Odongo submitted that article 230(5) of *the Constitution* and section 13 of the SRC Act provide for the parameters that SRC should consider before reaching its advice. He submitted that among the parameters required by law is the gathering of information on its own, conducting interviews and making enquiries and that flowing from the affidavits on record of the Permanent Secretary, National treasury, information was provided as to the fiscal sustainability of the health sector where the PS advised on the various options within the budgetary allocation which was shared with SRC and informed the advice of SRC.
83. It was thus submitted that the advice of SRC was properly grounded.

Determination

84. Having considered the pleadings filed by all the parties in court and the written submissions together with the cited authorities as highlighted by the parties, the issues that fall for determination are:
- a. Whether the impugned decision of the SRC as communicated in the letter dated 13th March, 2024 was in contravention of articles 27, 41(5) and 230(4)(b) and (5)(d) of *the Constitution* as read with sections 12, 13(c),(d), 15 of the Salaries and Remuneration Commission Act and sections 4, 5, 6, 8, 9, 10, 12 and 17 of the Salaries and Remuneration Commission (Remuneration and Benefits of State and Public Officers) Regulations, 2013,
 - b. Whether the Collective Bargaining Agreement with effect from July 1, 2017, contains disproportionate terms and conditions in favour of Medical Interns as compared with other graduate Interns whose internships are statutorily mandated, is discriminative, and unfair thus contrary to the dictates of articles 10, 27, 41, 232 of *the Constitution* and is therefore invalid.
 - c. Whether section 61 of the *Labour Relations Act* is unconstitutional as it bestows on the Cabinet Secretary the powers and functions of the Public Service Commission under articles 234 and those of the Salaries and Remuneration Commission under article 230,
 - d. Whether the respondents have derogated, contravened and infringed the fundamental rights and freedoms of the Petitioner in Nairobi Petition No. E051 of 2024, Vincent Oyiengo, as encapsulated and guaranteed in articles 10, 27, 28, 29, 30, 32, 36, 37, 41, 47, 50, 174 and 232 of *Constitution* of Kenya, 2010,
 - e. What orders should issue?



Whether the impugned decision of SRC was in contravention of articles 27, 41(5), 230(5) and 249 of *Constitution* as read with sections 12, 13 (c), (d), 15 of the Salaries and Remuneration Commission Act and sections 4, 5, 6, 8, 9, 10, 12 and 17 of the Salaries and Remuneration Commission (Remuneration and Benefits of State and Public Officers) Regulations

85. The SRC is established under article 230 of *Constitution* and its powers as enumerated under article 230(4) are 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.
86. article 230(5) provides for the key principles that guide SRC in the performance of its mandate. These are-
- a) The need to ensure that the total public compensation bill is fiscally sustainable;
 - b) The need to ensure that the public services are able to attract and retain the skills required to execute their functions;
 - c) The need to recognize productivity and performance;
 - d) Transparency and fairness
87. Section 12 of the *SRC* Act provides for two further principles which SRC is required to be guided by in its mandate in addition to those set out under article 230(5) of *the Constitution*. The twin principles are equal remuneration for work of equal value and that SRC shall take into account the recommendations of previous commissions established to inquire into the matter of remuneration in the public service.
88. The petitioners in Petition No E003 aver that the advice lacked scientific and verifiable justification, that the advice is unreasonable and fails to meet the standards of transparency and fairness required under article 230(5)(d).
89. It is also the petitioner's position that the SRC's advice contradicts section 12(2) of the Salaries and Remuneration Commission Act and that the respondent has disregarded its own previous recommendations on remuneration for interested party's members allowances that were previously approved but are now being restructured or abolished.
90. On its part, the SRC maintained that prior to issuing its advice on 13th March 2024, it took into account the constitutional principle on the need to ensure that the total public compensation bill is fiscally sustainable. The SRC further states that as advised by the National Treasury vide its letters of 9th October 2023 and 13th February 2024, the current stipend rates payable under the healthcare internship programme are neither affordable nor fiscally sustainable in the wake of the increased number of healthcare professional graduates.
91. The evidence on record points to the fact that remuneration for intern medical doctors, dentists and pharmacists has been the subject of discussion and policy decisions for a long time. In the Job Description Manual for the Ministry of Health carried out by the SRC dated March 2016, the positions of medical officer (Intern), Dental Officer (Intern) and Pharmacist (Intern) are all placed in Job Group L.



92. In the Revised Scheme of Service 2016 for Medical Officers, Dental Officers and Pharmacists the position of Intern is not provided for. The conversion tables at Appendices A, B and C of the Scheme however give a pointer to the fact that the previous scheme had the position of intern at Job Group L.
93. In the Internship Policy for Health Care Professionals issued by the Cabinet Secretary Ministry of Health in February 2020 paragraph 3.2.4 provides for Compensation of Interns as follows-

Internship shall be considered part of pre-service training; hence interns within the government-funded Programme shall be provided with a compensation package, in a form of a stipend, on a monthly basis for the entire placement period. This is to enable them meet the basic needs as they provide critical service within the public sector and contribute significantly to the delivery of health care. The compensation package for Government-funded interns deployed in public health institutions shall be harmonized across all counties.

For purposes of planning, training institutions and regulatory bodies shall be required to submit to the National Internship Steering Committee (NISC), internship projections over a three-year period alignment to the MTEF budget process. The Ministry of Health in collaboration with the Public Service Commission (PSC) shall establish the authorized staff establishment for all cadres of interns.

94. From the letter dated 17th November, 2021 addressed to the Cabinet Secretary Ministry of Health by the Secretary Public Service Commission, it is apparent that the Ministry of Health has an approved establishment for interns in various disciplines in the health sector. By that letter the Public Service Commission approved a total establishment of 9500 interns. The letter which is appended as “ARG 1” in the Replying Affidavit of Anne R Gitau, Chief Executive Officer of SRC is reproduced below:

Public Service Commission
Ref No PSC/EMCS/7/ (15)

Hon Mutahi Kagwe, EGH

Cabinet Secretary

Ministry of Health

Nairobi

Dear

Review Of Establishment For Interns-ministry Of Health

REF. Your Nos MOH/ADMIN/DC/9/8/VOL 1 9120) of 9.6.2021 and MOH/HR/6/1/27/(11) dated 31.8.2021

This is to inform you that the Public Service Commission has deliberated on your request for expansion of establishment for Interns in various disciplines in the Health Sector and approved a new establishment of Nine Thousand Five Hundred (9,500) posts as detailed below:



S/ N	Interns Category	CSG	Approved Establishment
1	Medical Officers Interns	2000	
2	Clinical Officers (BSCCM) Interns	9	1000
3	Clinical Officers (Diploma Holders) Interns	10	3500
4	Pharmacist Interns	12	800
5	Nursing Officer Interns	9	2000
6	Dental Officer Interns	10	200
Total	9500		

Take the necessary action.

Yours

signed

Dr Simon K Rotich, CBS

Secretary/CEO

Public Service Commission

95. According to SRC the available budgetary provision is not sufficient to cover the interns. SRC states that the Ministry was compelled to seek additional funding from Treasury as reflected in the letter dated 1st February, 2024 (page 85 of SRC's bundle of documents) which is reproduced below:

Ministry Of Health

Ref: No SDPH & PS.55/2/7/VOL.1/6

Dr Chris Kiptoo, PHd CBS

Principal Secretary

The National Treasury

Nairobi

Dear

Appeal For Additional Funding To Cover Cohort Ii Healthcare Workers Intership Placement Cost

Reference is made to your letter Ref No RES 1083/23/01 'A' (17) of 9th October, 2023 communicating the outcome of a review done by the National Treasury on our deficit on salaries and wages arising



from our submission for additional funds during Supplementary I. The analysis noted that deficit was mainly contributed by the Internship Programme.

Consequently, The National Treasury advised the Ministry against any further postings of Interns during FY 2023/2024 and the need to consider formulating a Policy on the amount payable to Interns with a view of accommodating more Interns in the Programme.

Toward this end, we have had discussions internally and The National Internship Co-ordination has been tasked to review the Policy to capture among others the rationalization on payable rates under the Internship Programme. The Committee has been given up to April 2024 to submit its report.

In the meantime, the Ministry together with the Stakeholders had reached a consensus to be posting Interns in two (2) Cohorts both in July and January/February. The Interns serving currently were posted in July 2023 and are due to exit by June 2024. There is also a group constituting Cohort II of Interns expecting to be posted out in January/February 2024.

We would like to appeal to The National Treasury to-consider funding this second Cohort under the current terms as we endeavor to revise the Internship Policy with a view of implementing it with effect from July-2024.

The cost associated with the Cohort II interns expecting to be posted in February 2024 is as follows:-

Cohort Ii Internship Funding Requirements – February 2024			
1.	Medical	849	,102,803,200.00
2.	Dentists	72	178,329,600.00
3.	Pharmacists	289	715,795,200.00
4.	Nursing	1134	1,447,210,800.00
5.	Bsc Clinical	145	200,970,000.00
6.	Diploma Clinical	1270	228,600,000.00
Grand total			4,873,708,800.00

The purpose of this letter therefore, is to request for additional Ksh 4,873,708,800.00 to enable us fund the aforementioned Cohort II while we revise the internship Policy in readiness for implementation in the subsequent internship groups.

Yours

Signed

Mary Muthoni Muriuki, CBS

Principal Secretary

Encls.

Copy to: Cabinet Secretary

Ministry of Health



Nairobi

96. In response to the letter from the Ministry of Health, Treasury, by letter dated 13th February 2024, directed the Ministry of Health to fast track the review of the Internship Policy with a view to accommodate more interns within the budgetary provision for the FY 2024/25. Specifically, Treasury advised the Ministry to rationalize the stipend paid to interns to fit within the budget.
97. The same advice had been given earlier by letter from Treasury dated 9th October, 2023. See page 89 of SRC bundle.
98. According to SRC, it is under this background that it received the letters dated 5th and 11th March, 2024 from the Ministry of Health seeking the review of the stipend for interns under the healthcare programme which it did through the impugned letter dated 13th March 2024.
99. The letters from National Treasury dated 9th October 2023 and 13th February addressed to the Ministry of Health and the letters from the Ministry of Health to Treasury dated 1st February 2024 and 16th February on the subject of Appeal for budget to fund cohort II internship placement are all exhibited by the SRC.
100. The letter from National Treasury addressed to the State Department for Public Health and Professional Standards dated 13th February 2024 is reproduced below for context:

Republic Of Kenya

The National Treasury And Economic Planning

Ref: RES 1083/23/01 'A'(29) Date: 13th February, 2024

Mary Muthoni Muriuki, CBS

Principal Secretary

State Department for Public Health and Professional Standards

Ministry of Health

BOX 30016-00100

Nairobi

Dear:

Appeal For Additional Funding To Cover Cohort Healthcare Workers Internship Placement Costs

This is in reference to your letter Ref No SDPH&PS 5/2/7/VOL I/6 dated in February, 2024 seeking for additional funding amounting to KSh 4,873,708,800 to cater for placement of 3,759 interns wef February 2024.

The National Treasury has reviewed your request and noted as follows:

1. In the FY 2023/24 Annual Estimates the State Department was allocated KSh 4,951,000,000 to cater for compensation to employees out of which KShs,3,688,166,173 was to cater for Internship Programme;
2. At the beginning of the Financial Year the State Department over engaged Interns without adequate budgetary provision contrary to the provisions of the *Public Finance Management Act*, 2012 and the *Public Finance Management (National Government) Regulations*, 2015. Nevertheless, the State Department was considered for additional funding amounting to KShs 2,050,051,378 in the context of the FY 2023/24 Supplementary Estimates No 1 to cater for the



Internship Programme. In addition, the State Department was advised to immediately stop further replacement of Interns who will be exiting in the course of the FY 2023/24 to contain the expenditure on this Programme, consider formulating a policy to reduce on the amount payable to the interns with a view to accommodate more Interns in the Programme within the available budgetary provisions and ensure that in future engagement of Interns under the Internship Programme is done strictly on the basis of the appropriated budget, and to ensure that in future engagement of Interns under the Internship Programme is done strictly on the basis of the appropriate budget, and

3. The State Department has tasked the National Internship Co-ordination Committee to review the Internship Policy to capture among others the rationalization on rates payable under the Internship Programme for its application wef July 2024. In addition, it is noted that the State Department together with the stakeholders has reached a consensus to be posting Interns in two cohorts both in July and January/February of each year. In this regard, it is noted that the State Department requires an additional funding of KSh.4,873,708,800 to cater for placement of 3,759 interns wef February, 2024.

The FY 2023/24 budget is being implemented under a tight fiscal framework with huge unfunded exchequer requests attributed to underperformance of projected revenue and the need to fund emerging priorities including payment of debt obligations. In this regard, the National Treasury is not in a position to provide the requested additional funding.

It is however noted that the State Department was considered for KShs 3,688,166,173 in the context of the FY 2024/25 Budget to cater for the Internship Programme. In this regard, the State Department is advised to fast track review of the Internship Policy with a view to accommodate more interns within the budgetary provision for the FY 2024/25 and the Medium-Term.

Yours

Signed

Dr Chris K Kiptoo, Cbs

Principal Secretary/the National Treasury

[Emphasis added]

101. In the instant case the State Department for Public Health and Professional Standards at the Ministry of Health was faced with a situation where Treasury had declined to approve additional funding for the internship programme while there were already qualified graduates awaiting placement on internship. It is in this context that it approached the SRC for advice. The letter dated 6th March, 2024 from the Ministry to SRC explains its position. The letter is reproduced below:

Ministry Of Health

Office Of The Cabinet Secretary

REF: SDPH&PS 5/2/18 6th March, 2024

Mrs Lyn Cherop Mengich, EBS

Chairperson

Salaries and Remunerations Commission

Box 43126-00100

Nairobi



RE: Remuneration Payable To Healthcare

Professionals Under Internship Programme

In Kenya, Health Sector Internship is a recognized compulsory experiential learning where graduates build upon acquired knowledge and experiences by working within a professional work setting. Internship is designed to allow graduates enhance their professionalism and gain career knowledge through hands-on training for a prescribed period of time after which they get a licensed practice. It is also a legal requirement for some cadres of healthcare professionals to undergo Internship after graduation from an approved training institution.

The Ministry of Health has been running a paid Internship Programme in respect of six cadres namely: Medical Officers, Pharmacists, Dental Officers, Nursing Officers (BSC), Clinical Officers (Degree Holders) and Clinical Officers (Diploma Holders). The Public Service Commission vide letter Ref No PSC/EMCS/7.1/15 of 17th November, 2021 approved the Establishment for the Internship programme as follows: -

S/NO	Interns Category	CSG	Approved Established
1.	Medical Officer Intern	9	2000
2.	Pharmacist Inter	9	800
3.	Dental Officer Intern	9	200
4.	Nursing Officer Intern	10	2000
5.	Clinical Officer (BSCCM) Intern	10	1000
6.	Clinical Officer (Diploma Holders) Inters	12	3500
TOTAL			9500



S/NO	Interns Category	CSG	Approved Established
1.	Medical Officer Intern	9	206,400
2.	Pharmacist Inter	9	206,400
3.	Dental Officer Intern	9	206,400
4.	Nursing Officer Intern	10	106,350
5.	Clinical Officer (BSCCM) Intern	10	115,500
6.	Clinical Officer (Diploma Holders) Inters	12	15,000

The National Treasury vide their letter Ref No RES 1083/23/01 'A' (29) of 13th February, 2024 advised the Ministry to formulate a policy to reduce the amount payable to each intern with a view to accommodate more interns in the programme strictly on the available budget. We note that the budget available in the Financial Year 2024/2025 is Kshs 3.7 B.

The demand for internships has been growing over the years due to the increased number of Institutions running the medical courses and subsequent surge in the numbers of graduands and the numbers are expected to rise further in the coming years. Similarly, the available budget cannot now accommodate these swelling numbers. In the current Financial Year, the Ministry posted 4129 interns in July 2023 and together with the 886 Doctors earlier posted in January 2023, we project to spend by the end of the Financial Year 2023/2024. In addition, we had scheduled to post another Cohort of 3,759 Interns at the cost of Kshs.4.9B in February 2024 but we lack the budgetary provision to cover the attendant cost.

To ensure sustainability of the Internship Programme, we request the Salaries and Remunerations Commission (SRC) to rationalize and determine the consolidated stipend payable to Health Professional interns across the cadres, taking into account the crucial role these interns play considering that they always serve at the forefront in the health response at the healthcare facilities where they are exposed to health risks in the line of duty.

We will appreciate your prompt response to enable us address the aforementioned internship programme challenges.

Signed



Nakhumicha S Wafula, Egh
Cabinet Secretary
Copy to: Mr Felix K Koskei, EGH
Chief of Staff and Head of Public Service

Executive Office of the President

Nairobi

Prof Njugna Ndungu, CBS

Cabinet Secretary

The national treasury and economic planning

Principal secretary

State Department for Public Health and Professional Standards

102. It is the argument of the petitioners and Claimant that the review of Intern Stipends by SRC did not comply with 12, 13(c), (d), 15 of the *Salaries and Remuneration Commission Act* and sections 4, 5, 6, 8, 9, 10, 12 and 17 of the *Salaries and Remuneration Commission (Remuneration and Benefits of State and Public Officers) Regulations*. From my reading of the said provisions my understanding of the provisions is that the procedure for review of stipend for interns was not within these provisions but was under sections 7, 26 and 27 of the Regulations as this was not the regular cyclical review required to be done every 4 years contemplated in the provisions cited by the petitioners. This was a special review requested by the Ministry of Health based on the then financial situation.
103. sections 4, 5, 6, 8, 9, 10, 12 and 17 of the Regulations provide as follows:
4. (1) The Commission shall review and set remuneration and benefits for State officers every four years.
 - (2) The Commission shall review and advise on remuneration and benefits for other public officers every four years.
 - (3) The Commission shall when undertaking a review under paragraph (1) and (2), evaluate remuneration and benefits of State and other public with a view to institute change, if necessary.
 - (2) The Commission shall undertake the review taking into account the applicable national budgeting and planning cycles.
 - (3) Despite paragraphs (1) and (2) the Commission may undertake a special review of the remuneration and benefits of State and other public officers to address emerging circumstances and conditions.
 - 5.(1) Whenever a review is due, the Commission shall request for relevant information, from public bodies, on remuneration.
 - 6.(1) Pursuant to article 230(4)(a) of *the Constitution*, the commission shall set the pension or gratuity due to a state officer.
 - (2) The Commission shall, in consultation with relevant stakeholders—



- (a) advise on the pension or gratuity due to other public officers taking into account the applicable laws; and
 - (b) undertake periodic reviews and make recommendations on pensions payable to eligible persons.
8. The Commission shall communicate the—
- (a) set and reviewed remuneration and benefits for State officers indicating the effective date of implementation; and advice on remuneration and benefits for other public officers indicating the effective date of implementation.
9. The Commission shall undertake job evaluation covering jobs in public bodies in order to
- (a) determine comparable and relative worth of jobs in public bodies;
 - (b) determine equal pay for work of equal value; and
 - (c) ensure fairness and transparency in pay.
10. (1) The Commission shall undertake job evaluation where-
- (a) jobs in a public body have not been evaluated by the commission
 - (b) a public body is established;
 - (c) a public office is established;
 - (d) a new job is established arising from—
12. A public body that meets the requirements for job evaluation as set out under regulations 10 shall submit to the commission information relating to jobs within the public body for the purposes of job evaluation.
- (2) The information to be provided in paragraph (1) shall include—
- (a) the approved institutional structure; (b) the approved staff establishment;
 - (c) the approved career progression guidelines or schemes of service;
 - (d) a list of jobs in the public body indicating current grades or levels;
 - (e) the complete, accurate, approved and signed-off job description manual presented in a format as prescribed by the Commission; and
 - (f) any other information that may be relevant for the job evaluation.
- 17.(1) The Commission shall—
- (a) develop and set salary structures for State officers; and
 - (b) advise on the salary structures for other public officers.
- (2) The Commission, shall, before developing and setting salary structures for State officers or advising on salary structures under paragraph—
- (a) conduct comparative surveys on labour markets and trends in remuneration to determine the relativity of remuneration of public service in relation to the market



trends; and subject the outcome of the comparative surveys on labour markets and trends in remuneration to the principles and factors set out in regulation 7.

104. Regulation 7 and 26 of the *Salaries and Remuneration Commission (Remuneration and Benefits of State and Public Officers) Regulations* provide as follows:

7. (1) The Commission shall, in setting, reviewing and advising on remuneration and benefits, where applicable, consider any a combination of the following principles and factors-

- a. the principles set out under article 230(5) of *the Constitution*, section 12 of the Act and other applicable laws;
- b. the economic performance of the country;
- c. the capacity of a public body to afford the cost of proposed remuneration and benefits;
- d. the ability of a public body to sustain payment of remuneration and benefits;
- e. the outcome of comparative surveys on the labour markets and trends in remuneration;
- f. comparative analysis between remuneration and benefits for similar jobs within institutions in the same sector to ensure equity and competitiveness;
- g. job evaluation results as undertaken by the Commission;
- h. cost of living;
- i. existing collective bargaining agreements;
- j. achievement of performance and productivity targets;
- k. government policies and guidelines;
- l. the equitable share of revenue to county governments; and
- m. any other relevant factor in determination of remuneration or benefits.

2. In this regulation "cost of living " means the cost of purchasing goods and services as measured by the changes in the Consumer Price Index as provided by the Kenya National Bureau of Statistics from time to time.

26.(1) The advice of the Commission, in relation to remuneration and benefits of all other public officers shall only be reviewed by the Commission.

2. A public body shall seek for the review of the advice of the Commission in writing.

3. The Commission may review its advice upon receipt of new material information or justification not previously placed before it provided that such review shall take into account the principles and factors set out in regulation 7.

27. (1) Pursuant to section 13(1)(a) of the Act, the Commission may, request a public body to provide such information as may be relevant.

(2) A public body shall, upon receipt of the request in paragraph (1), provide the information to the Commission in the manner specified by the Commission in the request.

105. From the above, it is evident that the advice given by SRC on the stipend for Interns under the Healthcare Internship Programme was necessitated by the request from the Cabinet Secretary on the



- basis that the available budgetary allocation for Healthcare Internship Programme was insufficient to sustain stipend payments at the rates enjoyed by previous cohorts. In my view, the SRC's advice was therefore well founded and in line with section 7, 26 and 27 of the Salaries and Remuneration Commission (Remuneration and Benefits of State and Public Officers) Regulations.
106. According to the SRC Act and regulations, there is no requirement for mandatory consultation under sections 7, 26 and 27 of the Regulations.
 107. Further, SRC did not recommend the review of the CBA. It is therefore the responsibility of the Ministry, after obtaining the advice of SRC, to initiate discussions regarding the review of the CBA.
 108. The *Public Finance Management Act*, 2012 and the Public Finance Management (National Government) Regulations, 2015 prohibit the incurring of expenditure that has not been factored in the budget without approval. In the instant case the amount approved in the budget for payment of interns was not sufficient to accommodate payment of stipend for the medical interns expected to be placed in February, 2024.
 109. sections 4, 5, 6, 8, 9, 10, 12 and 17 of the *Salaries and Remuneration Commission (Remuneration and Benefits of State and Public Officers) Regulations* relate to the periodical reviews carried out by SRC every 4 years and to job evaluations. In the instant case there was a specific request to SRC based of budgetary constraints which did not fall under the said sections.
 110. I do not find any merit in the averments that the process of arriving at the review communicated by SRC's letter dated 13th Mach 2024 was in violation of either articles 27, 41(5), 230(5) and 249 of *the Constitution* as read with sections 12, 13 (c), (d), 15 of the Salaries and Remuneration Commission Act and sections 4, 5, 6, 8, 9, 10, 12 and 17 of the Salaries and Remuneration Commission (Remuneration and Benefits of State and Public Officers) Regulations.

Whether the current cohort of healthcare interns were discriminated upon

111. It is the position of the petitioners in Eldoret Petition E003 of 2024 that in giving the impugned advice, SRC discriminated against the current cohorts of interns in the healthcare sector. According to them, since the year 2017, the medical officer/healthcare interns have been remunerated in accordance with the CBA which was agreed, executed and filed between the Kenya Medical Practitioners, Pharmacists and Dentists Union and the Ministry of Health. They further state that the last cohort of interns, who were recruited in July, 2023 were paid Kshs. 206,000 as provided in the CBA. That they were doing the same work as the newly recruited cohort of interns that are to be paid the impugned remuneration of Kshs 70,000.
112. In response, the SRC raised the question whether the differentiation in rates as advised in its circular dated 13th March 2024 compared to existing rates constitute a legitimate distinction permissible under article 27 of *the Constitution*.
113. According to the respondent, the differentiation arising from the budgetary constraints does not amount to constitutionally impermissible discrimination under article 27 of *the Constitution* but reflects a necessary adjustment based on fiscal realities and constitutional principles of public finance management.
114. The respondent states that the cohort posted in July 2023 is scheduled to complete the mandatory internship on June 20, 2024 and that no new cohort has been posted since July 2023. That as such, there is no foreseeable scenario where two concurrent cohorts would be subjected to different stipend rates.



115. What then is discrimination? The *Black's Law Dictionary*, 9th Edition defines “discrimination” as (1) “the effect of a law or established practice that confers privileges on a certain class because of race, age, sex, nationality, religion or hardship” (2) “Differential treatment especially a failure to treat all persons equally when no reasonable distinction can be found between those favoured and those not favoured”.

116. The position taken in law is that differential treatment does not necessarily lead to discrimination. This was discussed at length by the court in the case of *Nubian Rights Forum & 2 others v Attorney General & 6 others; Child Welfare Society & 9 others (Interested Parties)* [2020] eKLR where the court expressed itself as follows:

“982. The starting point in considering this issue is to look at the law and previous jurisprudence with regard to discrimination. So far as is relevant for present purposes, article 27 of *the Constitution* guarantees to everyone the right to equality and non-discrimination in the following terms:

27.

- (1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.
- (2) Equality includes the full and equal enjoyment of all rights and fundamental freedoms.
- (3) ...
- (4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.
- (5) ...

983. The precise meaning and implication of the right to equality and non-discrimination has been the subject of numerous judicial decisions in this and other jurisdictions....

29. The *Constitution* advocates for non-discrimination as a fundamental right which guarantees that people in equal circumstances be treated or dealt with equally both in law and practice without unreasonable distinction or differentiation. It must however be borne in mind that it is not every distinction or differentiation in treatment that amounts to discrimination. Discrimination as seen from the definitions, will be deemed to arise where equal classes of people are subjected to different treatment, without objective or reasonable justification or proportionality between the aim sought and the means employed to achieve that aim.

30. In this regard, the Court stated in the case of *Nyarangi & 3 others v Attorney General* [2008] KLR 688 referring to the



repealed constitution; “discrimination that is forbidden by the *Constitution* involves an element of unfavourable bias. Thus, firstly unfavourable bias must be shown by the complainant; and secondly, the bias must be based on the grounds set in the constitutional definition of the word “discriminatory” in section 82 of the *Constitution*.”

984. It is thus recognised that it is lawful to accord different treatment to different categories of persons if the circumstances so dictate. Such differentiation, however, does not amount to the discrimination that is prohibited by the *Constitution*. In *John Harun Mwau v. Independent Electoral and Boundaries Commission & Another* (supra), the court observed that:

“[i]t must be clear that a person alleging a violation of article 27 of the *Constitution* must establish that because of the distinction made between the claimant and others, the claimant has been denied equal protection or benefit of the law. It does not necessarily mean that different treatment or inequality will per se amount to discrimination and a violation of the *Constitution*.”

985. When faced with a contention that there is a differentiation in legislation and that such differentiation is discriminatory, what the court has to consider is whether the law does indeed differentiate between different persons; if it does, whether such differentiation amounts to discrimination, and whether such discrimination is unfair. In *EG & 7 others v Attorney General; DKM & 9 others (Interested Parties); Katiba Institute & Another: Petition 150 & 234 of 2016 (Consolidated)* the court held that:

“[288]. From the above definition, it is safe to state that the *Constitution* only prohibits unfair discrimination. In our view, unfair discrimination is differential treatment that is demeaning. This happens when a law or conduct, for no good reason, treats some people as inferior or less deserving of respect than others. It also occurs when a law or conduct perpetuates or does nothing to remedy existing disadvantages and marginalization.”...

987. With respect to the burden of proof on a claim that an action or law is discriminatory, it has been held that the burden lies on a person alleging unfair discrimination to establish his claim. In *Mohammed Abduba Dida v Debate Media Limited & another* [2017] eKLR, the court (Matiwo J) stated as follows:

“I must add that if the discrimination is based on any of the listed grounds in article 27 (4) of the *Constitution*, it is presumed to be unfair. It must be noted, however, that once an allegation of unfair discrimination based on any of the listed grounds in article 27 (4) of the *Constitution* is made and established, the burden lies on the respondent to prove that such discrimination did not take place or that it is justified.

On the other hand, where discrimination is alleged on an arbitrary ground, the burden is on the complainant to prove that the conduct



complained of is not rational, that it amounts to discrimination and that the discrimination is unfair.”

988. It must also be noted, as observed by Mativo J in *Mohammed Abduba Dida v Debate Media Limited & another (supra)* that:

“It is not every differentiation that amounts to discrimination. Consequently, it is always necessary to identify the criteria that separate legitimate differentiation from constitutionally impermissible differentiation. Put differently, differentiation is permissible if it does not constitute unfair discrimination.”

117. I have quoted the above decision at length because it is so apt in the present situation. The stipend approved by SRC was less than what is provided in the CBA and what was paid to the previous cohort of interns.

118. It is not in dispute that there was previously a scheme of service which placed medical, pharmacy and dental interns at Job Group L. The scheme of service as revised by the Public Service Commission in 2016 abolished the position of medical, dental and pharmacist interns under Job Group L and only provided for entry position be at job group M for qualified doctors after successful completion of internship and attaining registration.

119. The Internship Policy for Healthcare *Professionals of 2020* annexed to the documents filed by SRC at page 17 is silent on the amount of stipend payable to medical interns. Clause 3.2.4 provides for compensation of interns as follows:

Internship shall be considered part of pre-service training; hence interns within the government-funded Programme shall be provided with a compensation package, in a form of a stipend, on a monthly basis for the entire placement period. This is to enable them meet their basic needs as they provide critical service within the public sector and contribute significantly to the delivery of health care. The compensation package or Government-funded interns deployed in public health institutions shall be harmonized across all counties.

For purposes of planning, training institutions and regulatory bodies shall be required to submit to the National Internship Steering Committee (NISC), internship projections over a three-year period alignment to the MTEF budget process. The Ministry of Health in collaboration with the Public Service Commission (PSC) shall establish the authorized staff establishment for all cadres of interns.

120. It is therefore clear that there is a conflict between the CBA and the Revised Scheme of Service for Medical Officers, Dental Officers and Pharmacists approved by the Public Service Commission in September, 2016 which abolished the position of Intern from the Scheme of Service.

121. Although the Scheme of Service is dated September, 2016 and the CBA was negotiated on 30th June 2017, the issue of the Scheme of Service is not mentioned in the CBA. This begs the question whether of the parties were aware about the changes in the scheme of service at the time of negotiation of the CBA.



122. The respondent has submitted that after the revision of the scheme of service, internship ceased to be a position in the public service and this change provides intelligible differentia for disparate treatment between cohorts serving internship under the different policy dispensation.
123. This however does not explain why the parties still went ahead to provide in the CBA that the interns shall be deemed to be in Job Group L. None of the parties addressed the court on this issue.
124. The stipend is however negotiated and entrenched in the CBA for the period commencing July 1, 2017. The CBA provides that it applies to all unionisable employees, both members of the union who pay membership subscriptions and to non-members who under the CBA are obliged to pay Agency fees as provided under section 49 of the *Labour Relations Act*.
125. Based on the CBA the interns would have a legitimate expectation that they would be paid the rates provided in the CBA.
126. The *Labour Relations Act* provides at section 59 as follows:
- (1) A collective agreement binds for the period of the agreement –
 - (a) the parties to the agreement;
 - (b) all unionisable employees employed by the employer, group of employers or members of the employers’ organisation party to the agreement; or
 - (c) the employers who are or become members of an employers’ organisation party to the agreement, to the extent that the agreement relates to their employees.
 - (2) A collective agreement shall continue to be binding on an employer or employees who were parties to the agreement at the time of its commencement and includes members who have resigned from that trade union or employer association.
 - (3) The terms of the collective agreement shall be incorporated into the contract of employment of every employee covered by the collective agreement.
 - (4)
 - (5) A collective agreement becomes enforceable and shall be implemented upon registration by the Industrial Court and shall be effective from the date agreed upon by the parties. Registration of collective agreement. Flowing from the above, I find that in the absence of a scheme of service or policy document specifying the amount to be paid to medical interns for comparison, the petitioners cannot plead discrimination.
127. The CBA dedicates the whole of article IV to Management of Internship Program. On remuneration article IV G of the CBA provides:

G. Remuneration

The Medical Officer, Dental office and Pharmacist Inters will be compensated a salary equivalent to that of a Civil Servant in Job Group ‘L’ or its converted equivalent and will enjoy all other allowances such as House Allowance as per the Deployment Station, Leave Allowance, Commuter Allowance as per Job Group ‘L’. The interns shall in addition enjoy all the allowances applicable to them such as Extraneous Allowances as per the Job Group and Deployment Station, Doctors’ Allowances and the Medical Risk Allowance.



The employer shall facilitate issuance of proof of payment including but not limited to a payslip to allow remission of taxes, health insurance and credit facilities.

All interns shall be paid not later than 30 days from the date of return of Letter of Arrival form the Station of Deployment.

The remuneration of intern doctors shall be reviewed from time to time as per remuneration of civil servants and other doctors but not to the disadvantage of the intern doctors or any group of intern doctors.

128. The petitioners raised the issue of equal pay for work of equal value which is one of the principles that SRC is required to consider when reviewing remuneration. SRC on its part argued that this factor was not relevant as the interns who were earning the CBA rates would have completed internship by the time the petitioners started their internship and therefore there would not be a situation where interns working together and doing the same job were remunerated differently.
129. In this case all the interns recruited at the same time were paid at the same rate. What the petitioners complain of is that the impact of the impugned SRC letter would result in one cohort being paid less than what previous cohorts of interns were paid. Is this discrimination as envisaged in article 27 of *the Constitution* or in section 5 of the *Employment Act*?
130. As was stated by Mwita J. in *Jacqueline Okeyo Manani v Attorney General*, discrimination is any distinction, exclusion or preference made on the basis of differences to persons or group of persons based on such considerations as race, colour, sex, religious beliefs, political persuasion or any such attributes that has real or potential effects of nullifying or impairing equality of opportunity or treatment between two persons or groups.
131. It has been stated in many decisions that not every distinction or differentiation amounts to discrimination unless the different treatment is without objective or reasonable justification or proportionality between the aim sought and the means employed to achieve the aim.
132. In the instant case SRC has stated that the reduced stipend was necessitated by the budget constraints following advice from Treasury. It was necessary because the funds available were not sufficient to pay the new cohort at the same rate as the previous cohort.
133. In the letter dated October 9, 2023 Treasury had advised the Ministry of Health as follows:

The National Treasury And Economic Planning

Ref: RES 1083/23/01/ (“A”)

Ms. Susan Nakhumicha Wafula

Cabinet Secretary

Ministry of Health

Box 30016-00100

Nairobi

Request For Additional Funding For Personnel Emoluments

This is in reference to letter Ref. No. MOH/PR/PH/Gudget/Vol.1 (13) dated September 12, 2023 seeking for additional funding amounting to Ksh. 9.6 billion to cater for salary shortfall.

The National Treasury has reviewed the request and held consultations with the State Department for Public Health and Professional Standards and noted as follows:



1. In the FY 2023/24 Annual Estimates the State Department was appropriated Ksh. 4.951 billion to cater for salaries and wages for the Interns under the Internship Programme, Cuban Doctors under the Health Exchange Programme, Administrative and Technical Officers. An analysis of the budget indicates that the State Department has spent 1.184billion in the months of July and August 2023 on salaries and wages and will required Ksh. 6.541billion for the remaining 10 months to the end of the Financial Year which brings the total requirement to the end of Financial Year which brings the total requirement to approximately Ksh. 7.7226billion. in this regard, the State Department will therefore require an additional funding of Ksh.2.77 billion in the FY 2023/24. The detailed analysis on the expenditure for salaries and wages is as shown in Table 1 attached herewith;
2. The deficit on salaries and wages is mainly contributed by the Internship Programme for Human Resources for Health which amounts to Ksh.2.713 billion. You may wish to note that the State Department was appropriated Ksh.3.688 billion to cater for the Programme but the requirement is estimated at Ksh.6.401 billion in the current Financial Year; and
3. In the FY 2022/23 the Ministry of Health vide letters Ref No. MOH/FIN/1/1 VOL III(40) dated 27th April and May 8, 2023 respectively, sought for additional funding to cater for placement of 2,534 Interns. Considering the tight fiscal framework underpinning the implementation of the FY 2022/23 Budget the State Department vide letter Ref. No. RES108/22/01 'A' 9108) Dated May 18, 2023 was advised to consider engaging the Interns in the FY 2023/24 within the approved budgetary provision for the compensation to employees. It is however noted that the State Department has engaged Interns in disregard of the appropriated budget contrary to the provisions of the Public Finance Management Act, 2012 and the Public Finance Management (National Government) Regulations, 2015.

In view of the foregoing, the State Department for Public Health and professional Standards is advised as follows:

- i. To immediately stop further replacement of Interns who will be existing in the course of the FY 2023/24 with a view to reduce the shortfall;
- ii. To consider formulating a policy to reduce on the amount payable to the Inters with a view to accommodate more Interns in the Programme with the available budgetary provisions; and
- iii. To ensure that the future engagements of the Interns under the Internship Programme is done strictly on the basis of the appropriated budge. You are advised that the National Treasury will not provide additional funding to cate for any shortfall arising from over engagement of the Interns going forward.

Yours

Signed

Njugna Ndung'u, Cbs

Cabinet Secretary

Copy to: Mary Muthoni Muriuki, HSC

Principal Secretary

State Department for Public Health and Professional Standards



Ministry of Health

NAIROBI

134. The *public Finance Management Act* prohibits any expenditure in excess of approved budgetary allocation. The only options available to the Ministry of Health in the circumstances were either to take less interns or reduce the stipend. SRC advise was to reduce the stipend in order to accommodate all the interns within the available budgetary allocation rather than take on less interns and pay the rates in the CBA.
135. It is my finding that based on the unique circumstances under which the advice of SRC on stipends payable to health interns was given there was a negative difference in the amount of stipend paid between the old and new cohorts of interns but this was justifiable based on budgetary reasons. I do not find this to constitute prohibited discrimination under article 27 of the *Constitution*.

Whether the Collective Bargaining Agreement between the Kenya Medical Practitioners, Dentists and Pharmacists Union was discriminative in favour of Medical Interns as compared with other graduate Interns and thus contrary to articles 10, 27, 41, 232 of the *Constitution*

136. It is the case of the petitioners in Petition No. E005 that the CBA between the Ministry of Health and the Union is unfair because it favours medical interns in comparison with other interns in the public service. They argue that it is the responsibility of the Public Service Commission and SRC to ensure parity in the treatment of interns of all professions in the public service.
137. In response, the Kenya Medical Practitioners, Dentists and Pharmacists Union, the SRC and the Public Service Commission deny the same stating in sum that there is no discrimination between the health sector interns and interns in other professions, that freedom of association and CBA negotiation is available to any category of employees as of right under the *Constitution* and that the work done by medical interns is not comparable to that of other professions.
138. article 41 of the *Constitution of Kenya* provides for the right of every worker to form, join or participate in the activities and programmes of a trade union and that every trade union has the right to engage in collective bargaining.
139. The petitioners have not complained that any intern has been prevented from exercising their rights under article 41 by virtue of the CBA negotiated by the Kenya Medical Practitioners, Dentists and Pharmacists Union
140. Further, it has been demonstrated by SRC that there are policies that provide for payment of stipends for interns under the Public Service Commission, one of which is the Internship Policy for Healthcare Professions, the latest one being the one dated 2020 appended at page 2 of the replying affidavit of the Chief Executive Officer of SRC which was served upon the petitioners. The SRC has further appended other policy documents/circulars on stipends for interns in the public service at pages 92, 94 and 95 of the same affidavit being evidence of policy on the placement of interns in the public sector.
141. I find no merit in the argument by the petitioners that the provision for stipend for interns in the CBA between the Kenya Medical Practitioners, Dentists and Pharmacists Union is discriminative.
142. In Petition No E042 of 2024 the petitioner has stated at paragraph 32 and 33 that that the 1st respondent violated the constitutional rights and fundamental freedoms of its members to equal protection of the law, equality, dignity, and protection from discrimination. Further, that the 1st respondent has discriminated against the Petitioner's members and thereby violated their constitutional rights to equality, dignity, equal protection of the law, and equity by: -



- i. Failing to include the 16 cadres for posting of internship program by the Ministry of Health.
 - ii. Excluding 16 cadres in the health sector from being paid internship stipends.
 - iii. Paying some interns from other cadres of healthcare stipends while leaving out other cadres of interns under the umbrella and membership of the Petitioner.
143. Other than citing articles of the *Constitution*, the petitioner has not demonstrated how the respondents have violated the cited constitutional provisions.
144. I find that the petition does not meet the threshold of a constitutional petition as stated in the case of *Anarita Karimi Njeru v Republic* [1979] eKLR and *Trusted Society of Human Rights Alliance v Mumo Matemu & 5 others* [2015] eKLR where the courts stated that a party seeking a constitutional remedy is required to set out with reasonable precision that which is complained of, noting to stipulate which constitutional provisions have been infringed and how they have been infringed.
145. The issues raised in Petition No. E051 were addressed in Nairobi Petition No. E032 of 2024 by my Brother Ongaya J as acknowledged in the submissions of the Petitioner dated 10th July 2024. What the Petitioner submitted on are matters of implementation of the orders in the said petition. The suit therefore does not meet the threshold for a constitutional petition.
146. In Nairobi Cause No. E244 of 2024 the Claimant's demands are similar to those in Eldoret Petition E003 of 2024. The Claimant however did not demonstrate that it has locus to represent the intern nurses or even though this issue was raised. I find that it has not demonstrated that it has locus to represent the intern nurses in the claim. Nevertheless all the issues raised in the claim are adequately dealt with in Petition E003 of 2024.

Whether Section 61 of the *Labour Relations Act* is unconstitutional

147. The petitioners in Petition E005 of 2024 have prayed that a declaration be issued that to the extent that Section 61 of the *Labour Relations Act* provides that the Cabinet Secretary may, after consultations with the Board, make regulations establishing machinery for determining terms and conditions of employment for any category of employees in the public sector where there is no Collective Bargaining Agreement and that the terms and conditions of employment determined under subsection (1) shall have the same effect as a collective agreement registered under this Part and may be enforced as if it were a collective agreement, the same is unconstitutional as it bestows on the Cabinet Secretary the powers and functions of the Public Service Commission under articles 234 and those of the Salaries and Remuneration Commission under article 230.
148. Section 61 of the *Labour Relations Act* provides:
- Terms and conditions of service in the public sector where there is no collective bargaining.
- 61.
- (1) The Minister may, after consultations with the Board, make regulations establishing machinery for determining terms and conditions of employment for any category of employees in the public sector.
 - (2) The terms and conditions of employment determined under subsection (1) shall have the same effect as a collective agreement



registered under this Part and may be enforced as if it were a collective agreement.

- (3) The Minister may –
- (a) determine different terms and conditions for different categories of employees; or
 - (b) not exercise the powers under this section in respect of a category of employees who are represented by a trade union that is entitled to be recognised in terms of this Part.

149. In my understanding of section 61 of the *Labour Relations Act*, there is no conflict between the mandate of the Minister under this section and the role or powers of the PSC. The Minister's role under the section is very specifically provided for. It is to make regulations and not to set the terms and conditions of service as PSC does. The section further states that this power is exercised only where the employees are not covered by any CBA.

150. The interpretation by the petitioners is not in conformity with the wording in the section. I find no conflict between section 61 of the *Labour Relations Act* and the role of PSC.

What orders should issue

151. Having considered the issues raised in the various petitions and in the claim, I now make the following orders:

152. With regard to petition No 3 of 2024 the petitioners sought orders declaring the respondents advise of March 13, 2024 REF: SRC/TS/19(111) setting the remuneration for healthcare professional interns at a maximum of Kshs. 70,000 to be contrary to articles 27, 41(5), 230(4)(b) and (5)(d) as read with sections 12, 13(c) and (d), and 15 of the Salaries and Remuneration Commission Act and sections 4, 5, 6, 8, 9, 10, 12 and 17 of the Salaries and Remuneration Commission (Remuneration and Benefits of State and Public Officers) Regulations, 2013 and article 4 of the Right to Organize and Collective Bargaining Convention, 1949 and the quashing of the letter and subsequent letters of employment issued by the 2nd and 3rd Interested Parties for being discriminatory.

153. As I have found above, the letter dated 13th March, 2024 from SRC was an advisory to the Ministry of Health and did not violate any of the provisions cited by the petitioners.

154. However, as I have stated above, there is a conflict between the advice of the SRC to the Ministry of Health and the CBA between the Kenya Medical Practitioner, Dentists and Pharmacists Union signed with the Ministry of Health which provides for the payment of remuneration for the interns at Kshs. 206,000 per month based on Job Group L. In view of the foregoing and noting that the CBA has been reviewed and agreement reached on all issues except the remuneration of interns, the parties are directed to commence negotiation of the said clause of the CBA in the manner provided in article 1 of the CBA within the next 90 days.

155. It is a matter of public knowledge that the interns have already been posted pursuant to an agreement between the Ministry of Health and the Kenya Medical Practitioner, Dentists and Pharmacists Union. Although the agreement was not produced in court, the court takes judicial notice of the same. The said arrangements shall stay in place until the parties conclude the negotiations or come to an agreement.

156. Petition No E005 is dismissed.



157. Petition No E042 of 2024 is dismissed.

158. Petition No E051 of 2024 is dismissed.

159. Cause No E244 of 2021 is dismissed.

160. In view of the nature of the suits being of public nature, each party shall bear its costs.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 17TH DAY OF OCTOBER 2024

MAUREEN ONYANGO

JUDGE

