



**Kenya Union Of Domestic, Hotels, Educational Institutions And Hospital Workers Union (KUDHEIHA) v Board of Management of Mombasa Hospital Association (Cause E011 of 2024) [2024] KEELRC 2466 (KLR) (11 October 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2466 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA**  
**CAUSE E011 OF 2024**  
**M MBARŪ, J**  
**OCTOBER 11, 2024**

**BETWEEN**

**KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTIONS AND HOSPITAL WORKERS UNION (KUDHEIHA) ..... CLAIMANT**

**AND**

**BOARD OF MANAGEMENT OF MOMBASA HOSPITAL ASSOCIATION ..... RESPONDENT**

**JUDGMENT**

1. The claimant is a registered trade union and the respondent is a medical facility. Parties have a Recognition Agreement and have negotiated several Collective Agreements (CBA), the last dated 7 December 2021, effective 1<sup>st</sup> January 2021 to December 2022.
2. The claim is that the claimant's proposal to review the CBA was shared with the respondent on 12 October 2022 but in reply or counteroffer, through a letter dated 16 November 2022, the respondent noted that the proposal was unrealistic. The claimant had relied on the consumer price index (CPI) and despite inviting the respondent to several meetings to address the proposal, there was no attendance. Efforts for joint negotiations have not borne fruit due to the respondent's insistence not to agree.
3. On 4 October 2023, the claimant reported a dispute to the Minister and although the conciliator held several meetings, the respondent refused to negotiate. Parties were unable to agree on the following items;
  - a. General wage increment;
  - b. House allowance;
  - c. Leave travelling allowance;



d. Risk and extraneous allowance.

Parties have not been able to negotiate or conclude a new CBA.

4. The claim is that on the general wage increment, initially, the claimant had sought a 20% increase from 1<sup>st</sup> January 2023 and 20% from 1<sup>st</sup> January 2024.
5. During negotiations, the claimant's proposal was negotiated to 15% from January 2023 and 2024. The respondent proposed 9% from January 2023 and 2024.
6. When parties attended before the conciliator, the claimant negotiated for a 12% increase while the respondent proposed an 11% increase in both years.
7. The claimant's proposal had taken into account the CPI and the wage differentials between the government and what the respondent is currently paying those in management. Under Wage Guideline No.2 which endeavours to compensate workers for their efforts, the proposed wage increment is fair and reasonable.
8. On the claim for house allowance, the claimant proposed a 20% increment. The proposal is to be paid on top of the current allowance which is;  
Job group 1 to 4 – Ksh.9, 317;  
Job group 5 to 6 Ksh.9, 680.
9. During negotiations, the claimant reduced the claim to 12% while the respondent sought a 5% increase. Further negotiations realized a proposal of an 11% increment for both 2023 and 2024.
10. The right to provision of housing or house allowance is under Section 31 of the *Employment Act*. Due to the nature of duties undertaken by members of the claimant, the need for provisions of accommodation is necessary and in the alternative, suitable and appropriate provisions of a house allowance to enable the employees to secure appropriate accommodation. The proposed 11% increment as against 12% is not reasonable.
12. On the claim for leave travelling allowance, the claim is for a provision of Ksh.7, 000 against the current Ksh.6, 000. The cost of transportation has gone up and every time the employees take annual leave, they encounter challenges.
13. The claim for risk/extraneous allowance is for the provision of Ksh.8, 000. This proposal has been addressed in previous negotiations without success. The claimant has undertaken research and done a comparative analysis and noted that nurses who were employed in the years 2019 to 2022 are paid Ksh.19, 500 and Ksh.19, 900 as extraneous allowances per month respectively. The failure by the respondent to accord the claimant members the same treatment is discriminatory since most are exposed to disease and they work together with nurses.
14. In a circular dated 14 September 2015 by the Salaries and Remuneration Commission (SRC) to the Minister for Health and all Counties and County Public Service Boards, indicated the figures in which all health workers are supposed to be paid an extraneous allowance to avoid any discrimination. The circular directed for payment of Ksh.8, 000.
15. During negotiations, the audited accounts indicated the respondent is a profit-making entity and the benefits should be shared with the increase in wages, risk allowance and allowances.

The claimant is seeking the items in dispute be awarded as follows;

16.



- a. General wage increase at 12% from 2023 and 2024;
- b. House allowance at 12% for 2023 and 2024;
- c. Leave travel allowance of Ksh.7,000; and
- d. Risk/extraneous allowance of Ksh.8, 000 per month as noted by SRC.
- e. Costs of the suit.

## Response

17. In response, the respondent admits there is a Recognition Agreement and several CBA have been negotiated. The last CBA is dated 7 December 2021 taking effect on 1<sup>st</sup> January 2021.
18. The response is that there was a proposal shared by the claimant for the review of the CBA and there were negotiations. The delays in concluding the negotiation arose from the high cost of living and cost of doing business arising from macroeconomic factors.
19. On 26 May 2023, the respondent responded to the proposals made and noted the increases sought were not sustainable and that parties should maintain the status quo. At the time the respondent had an operating deficit of Ksh.23 million attributed to low patient activity and the general decline in the national economy.

During negotiations, 6 clauses were not agreed on including;

- a. General wage increment;
  - b. House allowance;
  - c. Risk/extraneous allowance;
  - d. Leave travelling allowance;
  - e. Commuter allowance;
  - f. Christmas gift.
20. The claimant reported a dispute to the Minister and a conciliator was appointed.
  21. During negotiations, on 15 December 2023 parties agreed and dropped the items on Christmas gift and commuter allowance. A certificate of unresolved trade dispute issued by the conciliator, the respondent dispute the conciliator's report as it failed to capture the true discussions during conciliation. The proposals by the claimant did not contain the item on risk/extraneous allowances as alleged. Making such a payment would drive the respondent's costs up by a sum of Ksh.26.6 million which is unsustainable.

During the negotiations, the respondent committed to the following;

- a. General wage increment;
  - 2021 – 10%
  - 2022 – 10%
- b. House Allowance
  - 2021 – 10% - grade 1-4 Ksh.8, 470 (2021) and Ksh. 9,317 (2022)



2022 – 10% - grade 5-7 Ksh.8, 800 (2021) and Ksh. 9,680 (2022)

- c. Leave travelling allowance  
Increased to Ksh.6, 000 across all union cadres from Ksh.2, 400 and others depending on their places of origin and distance.
  - d. Retirement age reviewed from 55 to 60 years.
22. During the negotiations meeting on 25 October 2023, the claimant's demands and those of the respondent were noted as follows;
- a. Wage increase union demanded 12% and respondent offered 9%;
  - b. The House allowance union demanded 12% and the respondent offered 6%;
  - c. Leave travel allowance union demanded Ksh.7,000 and the respondent offered Ksh.6.500;
  - d. Risk/extraneous allowance the union demanded Ksh.8, 000 and to the respondent this is not applicable.
23. During the negotiations meeting in January 2024, parties further agreed as follows;
- a. Wage increase, union 12% and respondent 11%;
  - b. House allowance, union 12% and respondent 11%;
  - c. Leave travel allowance, union 7,000 and respondent Ksh.7,000;
  - d. The risk/extraneous was not a negotiable item.
24. The respondent maintained that the proposals made would push the wage bill extremely high and are not sustainable. The proposals under the CBA 2023/2024 were generous taking into account the general economic factors in the region. The proposal on risk/extraneous allowance was not in the previous CBA and the SRC circular did not relate to the cadre of the claimant members as alleged. This is meant for doctors and nurses in the course of their duties. For private hospitals, this is not sustainable. The alleged research by the claimant in this regard is without evidence and no private hospital is noted as paying such an item.
25. The respondent maintains a Health and Safety Committee that ensures the health and safety of all its employees as required by the *Occupational Safety and Health Act*. There are constant safety inspections to ensure the working environment is safe. All employees have unlimited medical coverage in case of illness including specialized lists. Staff medical costs in 2022 were Ksh.41 million and Ksh.45 million in 2023. Uniforms worn while on duty are available 24 hours and are cleared in the hospital.
26. The alleged discrimination is not particularized and the issue of risk/extraneous allowance is only tailored for doctors and nurses given their skills and to avoid the loss of specialized doctors and nurses.
27. From the onset of the COVID pandemic, the respondent suffered low finances and is yet to fully recover. With construction and rehabilitation of facilities, in the year 2023, the costs went up to Ksh.302.9 million and a further Ksh.82.8 million in equipment purchases. The respondent proposal for the CBA items are;
- a. Wage increase 11%;
  - b. House allowance 11%;



- c. Leave travel allowance Ksh.7,000;
  - d. Risk/strenuous allowance – not applicable.
28. Both parties agreed to address the claim by way of written submissions.

### **Determination**

29. The claims, responses and written submissions filed are analyzed and the letters and records submitted before the conciliator are considered.
30. All CBA negotiations must be taken in context. During the negotiations, parties must address key policy questions of;
- (i) Minimum standard of living determined by the rise in cost of living index since the last wage increase or economic performance;
  - (ii) The performance or productivity increase in the specific sub-sector over the period in question; and
  - (iii) Ability of the employer to pay.
31. The agreed-upon increment which then forms the new wage or salary is therefore determined based on the Consumer Perception Index (CPI) and spread over the period of the CBA. Such application of increment is meant to be spread to ensure equality on the CPI over the term until a new wage or salary is agreed upon as held in the case of Kenya Petroleum Oil Workers Union v Kenya Pipeline Company Limited & 2 others [2018] eKLR.
32. In the written submissions, the respondent has applied the simple rate computation in addressing the wage increase, house allowance and leave travel allowance while the claimant seeks to apply the compound rate increments. The respondent has tabulated the cost implications of the increments and factors put into account during the negotiations which went into several meetings.
33. The gradual proposals counter-proposals and final proposal demonstrate keenness to engage based on affordability and sustaining the business and wage bill.
34. The claimant's proposal of a 20% wage increase was reduced to 12% while the respondent's proposal of 9% graduated to 11%
35. The claimant's proposal on house allowance was 20% which was reduced to 12% while the respondent's proposal of 5% increased to 11%;  
Leave travel allowances were largely agreed to Ksh.7, 000.
36. The item on risk/extraneous allowance proposed by the claimant at Ksh.8, 000 was not adopted by the respondent.
37. Based on the applicable standards and practice of salary increments, the simple rate application should apply as set out in the analysis by the respondent. Parties remain engaged in future negotiations. The current CBA negotiations for the period of 2022/2023 are overtaken in time and have eaten into the next phase of 2024/2025. The dues under the current phase will go into the arrears payable hence putting the respondent into its reserves.
38. In this regard, the items negotiated are to apply the following rates for 2022/2023;
- a. Wage increase 11% in both years;



b. House allowance 11% both years;

SUBPARA c.

Leave allowance Ksh.7, 000 across the cadres.

39. On the risk/strenuous allowance, the claimant asserts that the SRC has given a rate of Ksh.8, 000 across all ranks while the respondent asserts that this only applies to doctors and nurses and context is to secure these specialists' positions and avoid movements to foreign countries.
40. The circular by the SRC should be given context. I have extracted the subject circular of 14 September 2015 and it relates to Health Workers Allowances. A health worker and a worker in a health facility are not synonymous. Whereas any person may work in a health facility, a health worker is different as one trained as a nurse or doctor, pharmacist, dentist or health care professional. To expand this category of employees to the claimant members would negate the reference and context given to the SRC circular which also addressed other items such as;
- a. Emergency call allowances;
- b. Health risk allowances;
- c. Non-practice allowance; and
- d. Uniform allowance.
41. In this case, the respondent has secured the claimant members to other direct benefits by providing the following;
- a. Health and safety committee;
- b. Constant inspections of a safe working environment;
- c. Safety apparel;
- d. Unlimited medical cover;
- e. 24 hours medical service;
- f. Uniforms; and
- g. Training on safety.
42. As noted above, both parties are engaged at the shop floor and invited to the next phase of CBA negotiations on any pending items unresolved.
43. Accordingly, parties shall apply the simple interest of 11% each year for the CBA 2022/2023; house allowance at 11% for 2022/2023; and a leave travelling allowance of Ksh.7, 000 across the cadres of the claimant members.

Each party is to bear its costs.

Orders accordingly.

**DELIVERED IN OPEN COURT AT MOMBASA ON THIS 11 DAY OF OCTOBER 2024.**

**M. MBARŪ**

**JUDGE**

