



**Scholapurkar & 33 others v Mediheal Group Limited & 4 others (Cause E042 of 2023) [2024] KEELRC 13607 (KLR) (15 October 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13607 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
CAUSE E042 OF 2023  
DN NDERITU, J  
OCTOBER 15, 2024**

**BETWEEN  
TINAY UPENDRA SCHOLAPURKAR & 33 OTHERS ..... CLAIMANT  
AND  
MEDIHEAL GROUP LIMITED & 4 OTHERS ..... RESPONDENT**

**RULING**

**I. Introduction**

1. The 34 claimants herein are foreign nationals employed by the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> respondents, limited liability companies duly incorporated in Kenya and owned and or managed by the 4<sup>th</sup> respondent.
2. The contracts of employment between the claimants and the respondents contain an arbitration clause to the effect that a dispute relating thereto shall be referred for arbitration.
3. However, vide a statement of claim dated 31<sup>st</sup> August, 2023 the claimants filed this cause in court ostensibly seeking for interim relief under Section 7 of the Arbitration Act and Rule 2 of the Arbitration Rules, 1997.
4. In the statement of claim the claimants are seeking a total of approximately Kshs150,800,800/= against the respondents in salary arrears for an average of six months for each employee. The claimants are seeking – “the claimants intend to refer the dispute to arbitration and pray for costs of and incidental to this claim”. As far as the proceedings indicate, the claimants have so far not referred the matter for arbitration as intimated for the reasons that should become clear in the succeeding parts of this ruling.
5. The court encouraged the parties led by their respective counsel to engage in negotiations with a view of reaching an amicable resolution. On 24<sup>th</sup> October, 2023 counsel for both sides, Mr. Mailu for the claimants and Mr. Katwa for the respondents, informed the court that they had engaged and drafted a



consent dated 23<sup>rd</sup> October, 2023 that was to settle all the issues between the parties. This consent filed and adopted by the court on 24<sup>th</sup> October, 2023 provided as follows –

1. Consent executed on 4<sup>th</sup> October, 2023 and adopted by court be varied to the extent set out herein in relevant clauses.
2. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to remit part of the Claimant's salaries in the sum of Indian Rupees 29,640,000.00, or its equivalent in Kenya Shillings, at bank exchange rate, on or before 5.00 pm, 1<sup>st</sup> November, 2023.
3. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to remit further sum of Indian Rupees 53,854,708.00 or its equivalent, in Kenya Shillings, at bank exchange rate, on or before 5.00 pm, 30<sup>th</sup> November, 2023.
4. All amounts be remitted by real time gross settlement (RTGS) to the account detailed below:  
Account Name: ADRA Advocates LLP – Client Account  
Bank Branch: Kilimani Supreme Center  
Account No. xxxxxxxx  
Bank Code: 0xx  
Bank Code: xxx  
Swift Code: EQBLKENA
5. All other terms of the consent of 4<sup>th</sup> October, 2023 not varied by this consent to remain in force.
6. Execution to issue forthwith in the event of failure to abide by the terms of this consent.

1. The earlier consent dated 4<sup>th</sup> October, 2024 that is referenced in the above consent had provided as follows –

1. An injunction do issue restraining the Respondents whether by themselves, their agents, employees, assigns, servants or any other person claiming under them whatsoever from illegally; suspending, terminating, interfering with and/or intermeddling in any manner whatsoever with the Claimants' employment.
2. An injunction do issue restraining the Respondents whether by themselves, their agents, employees, assigns, servants or any other person claiming under them whatsoever from cancelling and or deporting the Claimants.
3. All the 34 Claimants to be paid One (1) Month salary each as per the due amounts in their respective contracts, by 5.00 pm 21<sup>st</sup> October 2023. The amount payable totaling up to Indian Rupees 14,820,000.00 or its equivalent in Kenya shillings at bank exchange rate. Amount to be remitted by real time gross settlement (RTGS) to the account detailed below:

Account Name: ADRA Advocates LLP – Client Account

Bank Branch: Kilimani Supreme Center

Account No. xxxxxxx

Bank Code: 068



Bank Code: 147

Swift Code: EQBLKENA

4. The one-month net payment due on 21<sup>st</sup> October 2023 be as follows:



No.	Name	One Month's Salary (Indian Rupees)
	Dr. Tanay U. Sholapurkar	1,000,000.00
	Mr. Bobin Thomas Cherian	75,000.00
	Mr. Bhanuprakash Jakkalavadiki	70,000.00
	Dr. Nikita Sharma	400,000.00
	Dr. Rishi Raj Singh	800,000.00
	Mr. Vipin Varghese	70,000.00
	Dr. Nur Diyanah Binti Jaburulla	350,000.00
	Mr. MathewMani Muruganatham Sivanammal	70,000.00
	Dr. Akkenapally Rajendra Prasad	1,000,000.00
	Dr. Sandeep Sharma	700,000.00
	Dr. Vishal Shinde	650,000.00
	Dr. Honey Choudhary	350,000.00
	Dr. Karmugilan Karmegam Subburaj	200,000.00
	Dr. K. P. Naga Arunasiri	400,000.00
	Dr. Lalit Varadpande	900,000.00
	Dr. Murali Mohan Muthyala	525,000.00
	Dr. Rachana Sharma	400,000.00
	Dr. Ramasamy Karthikai Selvi	150,000.00
	Dr. Subhash Ushakoyala	700,000.00



Dr. Surekha Boreddy Veera	450,000.00
Mr. Ajish R John	80,000.00
Mr. Bijo John	110,000.00
Mr. Ganpat Suthar	110,000.00
Mr. Hitesh Bhatt	90,000.00
Mr. Maneesh Mathew	100,000.00
Mr. Nimeesh Abraham	70,000.00
Mr. Ribu C. Baby	75,000.00
Mr. Sarvesh S. Chouhan	70,000.00
Mrs. Bency P. Kunjumon	50,000.00
Mrs. Jency George	65,000.00
Dr. Mohanlal Hiram Bisnoi	440,000.00
Dr. Vijaysinh Patil	1,400,000.00
Dr. ashwin Soni	900,000.00
Dr. Sunil Dube	2,000,000.00
Total	14,820,000.00

5. Execution to issue forthwith in the event of failure to abide by the terms of this consent.
7. The respondents did not honour the consent and as result the claimants went after various garnishees who held monies for or on behalf of the respondents and substantial sums were recovered in execution of the consent order that was in essence a judgment. As many as 14 garnishees and one interested party have since joined the proceedings. Some of the garnishees who released the attached amounts in full have been discharged.
8. While several applications for and against the garnishees and the interested party were pending rulings, Mr. Katwa for the respondents on 19<sup>th</sup> September, 2024 informed the court that the respondents were now realistically ready to settle the entire balance due but stated that counsel for the parties had not agreed on the balance due and payable following the payments already made by the various garnishees. The other issue that had not been agreed upon was the exchange rate as the claimants, being foreigners, were apparently ordinarily paid in Indian rupees. By consent between Mr. Katwa and Miss Shah (appearing with Mr. Mailu for the claimants) the court directed parties to file affidavits on the two issues for the court to render a ruling thereon hopefully bringing the matter to its logical conclusion



without the need of rulings on the many other applications pending in the matter by some of the garnishees and the interested party.

9. It was also agreed and directed that all the pending applications be held in abeyance as once the payments of the pending balance is made by the respondents there shall be nothing else really left to be heard and determined.
10. This ruling, therefore, is in regard to the two or so issues alluded to above and any other auxiliary issue thereto. In support of their position on the two issues the claimants filed an affidavit sworn by the 1<sup>st</sup> claimant on 25<sup>th</sup> September, 2024. The respondents filed an affidavit by Zala Amarsinh Ajitsinh sworn on 20<sup>th</sup> September, 2024.
11. In their affidavit, the respondent's representative above deposes that the consent of 23<sup>rd</sup> October, 2023 entitled the claimants to a sum of Indian Rupees 83,494,708 payable "at bank exchange rates". It is deposed that at the then prevailing exchange rate the above amount equated to approximately Kshs130,000,000/=.
12. It is pleaded that as at the time of making the oath the claimants had received over Kshs47,873,411/= made up as follows –



No.	Paid By	Amount (KES)	Date Of Receipt
1 <sup>st</sup> Garnishee – National Hospital Insurance Fund	23,48,064.00	18 January 2024	
3 <sup>rd</sup> Garnishee – Jubilee Insurance Company Limited	6,973,757.00	19 January 2024	
3 <sup>rd</sup> Garnishee – Jubilee Insurance Company Limited	393,777.00	26 February 2024	
5 <sup>th</sup> Garnishee – AAR Insurance Kenya Limited	627,078.00	20 May 2024	
7 <sup>th</sup> Garnishee – Britam General Insurance Company (Kenya) Limited	1,174,989.90	2 April 2024	
9 <sup>th</sup> Garnishee – CIC General Insurance Limited	1,883,023.16	23 April 2024	
11 <sup>th</sup> Garnishee – Minet Kenya Insurance Brokers Limited	2,139,047.00	13 April 2024	
12 <sup>th</sup> Garnishee – GA Insurance Limited	819,304.00	17 July 2024	
13 <sup>th</sup> Garnishee – Pacis Insurance Company Limited	33,675.00	19 March 2024	
14 <sup>th</sup> Garnishee – Kibabii University	2,871,470.00	22 August 2024	

13. It is therefore deposited that the amount now due and payable to the claimants is Indian Rupees 56,903,137 equivalent to approximately Kshs89,906,956/=.
14. It is deposited that the applicable exchange rate should be the current (obtaining) exchange rate as at the time of the actual payment. It is further deposited that that is the right method to give value of the money



to both parties, to enforce the consent order that contemplated payments at the obtaining exchange rate, and that neither party shall suffer prejudice by attaching real value to the money at the obtaining exchange rate. It is deposed that using the exchange rate that obtained as at the time of the consent shall distort the value of the currency and prejudice the respondents who shall be forced to pay more than the market value of the money. The court is urged to apply the Central Bank Exchange rate applicable as at the time of the actual payment or deposit.

15. In their affidavit, which is also in essence a response to the respondents' affidavit, the claimants state that as of 25<sup>th</sup> September, 2024 only a total of Kshs39,744,881.06 had been paid and received and not Kshs47,873,411/= as alleged in the affidavit of the respondents. The said sum is made up as follows –



No.	Name of Garnishee	Amount paid in Kshs	Date of Remittance	Rate	Amount in INR
	National Hospital Insurance Fund (NHIF)	23,648,064.00	19.01.2024	1,9288	12,260,506
	Medical Administrators Kenya Limited (MAKL)				
	Jubilee Insurance Company Limited	6,975,757.00	19.02.2024	1.9288	3,615,594
		393,777.00	26.02.2024	1.7355	226,895
	Moi University				
	AAR Insurance Kenya Limited	627,078.00	26.02.2024	1.7355	361,324
	Madison Group				
	Britam General Insurance Company (Kenya) Limited	1,174,990.00	26.02.2024	1.7355	677,032
	The CIC Insurance Group Plc				
	CIC General Insurance Limited	1,883,023.00	23.04.2024	1.5871	1,186,455
	Old Mutual General				



Kenya Limited				
Minet Kenya Insurance Brokers Limited	2,139,047.00	13.04.2024	1.5645	1,367,240
GA Insurance Limited				
PACIS Insurance Company Limited	33,675.00	13.04.2024	1.5645	21,524
14.	Kibabii University	11,000,000.00	1.6000	6,875,000
TOTAL		47,873,411.00	26,591,571	
Claim (INR)	83,494,708			
Balance (INR)	56,903,137			
Balance (Kshs)	89,906,956			

16. It is stated that Kibabii University, the 14<sup>th</sup> garnishee, has only paid Kshs2,871,470/= against a total of Kshs11,000,000/= due and payable from it. It is stated that as a matter of fact this garnishee has not been discharged by the court due to that balance.
17. On the exchange rate applicable, it is deposed that the same should be the rate applicable at the recipient bank as at the time of actual payment or deposit of the funds.
18. It is further deposed that it is the respondents who failed, refused, and or neglected to settle the agreed sum by 30<sup>th</sup> November, 2023 as per the consent order. This failure led to the claimants taking out execution proceedings by attachment of funds held by the various garnishees.
19. It is deposed that the original consent sum was Kshs166,070,974.21 and that once the already paid sum of Kshs39,744,881.06 is deducted the balance due is Kshs126,326,093.15. The court is urged to refer to an affidavit by the same deponent sworn on 30<sup>th</sup> May, 2024 which was not disputed by the respondents notwithstanding that they were given an opportunity by the court to respond to the same on 11<sup>th</sup> July, 2024. It is deposed that the balance should attract interest at court rates of 14% per annum from the date of the consent till payment in full.



## II. Analysis & Determination

20. In both consents cited and alluded to above the total amount due and payable from the respondents to the claimants was not expressly stated. It is the understanding of the court that the parties were in consensus on the same. The necessary implication is that the parties agreed and were in consensus that the total debt was as pleaded in the claim in the sum of Indian Rupees 83,858,455 equivalent, according to the claimants, to approximately Kshs150,800,800/= as at the date of filing the claim on 1<sup>st</sup> September, 2023. It is on the that basis and consensus on this amount that the two consents were negotiated, executed, filed, and adopted by the court as its orders.
21. In my view, therefore, the total amount due and payable is not in dispute as that issue was settled in the consents above. Upon the consents being adopted by the court, the amounts became due and payable. Unfortunately, and sadly so, the respondents did not honour their part of the bargain, so to say, which was an obligation and duty imposed by the two adopted consent orders. It is due to that default on the part of the respondents that the claimants commenced execution by way of garnishee proceedings.
22. It is from the garnishees that the claimants have recovered the monies listed in the claimants' affidavit. The payments received by the claimants as listed have not been disputed except for the amount recovered from or paid by Kibabii University, the 14<sup>th</sup> garnishee. According to the claimants the said garnishee has only paid Kshs2,871,470/= a payment made on 22<sup>nd</sup> August, 2024. On the other hand, the respondents have alleged and taken the position that the said garnishee has paid a sum of Kshs11,000,000/= the entire amount that they are holding for the respondents.
23. However, the respondents have not demonstrated or proved that the said 14<sup>th</sup> garnishee has paid the alleged sum of Kshs11,000,000/=. The claimants have indicated that the amount of Kshs2,871,470/= only was paid on 22<sup>nd</sup> August, 2024.
24. He who alleges must prove is a basic rule of evidence and the respondents ought to have tendered evidence of the alleged payment of Kshs11,000,000/= by the 14<sup>th</sup> garnishee. In absence of such evidence the court upholds the position as deposed by the claimants that only Kshs2,871,470/= has been paid and received from the 14<sup>th</sup> garnishee and this explains why it has not been discharged as per the court record.
25. Now, as noted above and as pleaded by the claimants, the amount claimed in the memorandum is Indian Rupees 83,858,455 "or approximately Kshs150,000,800/= as of the date of filing" the cause. A party is bound by its pleadings and the claimants cannot now shift the claim and allege, as deposed in the affidavit, that the amount due was Kshs166,070,974.21 or its equivalent in Indian Rupees. If the court was to allow the claimants to shift goals to that extent, the very essence, import, and efficacy of the two consents above shall be lost.
26. In the circumstances, the court shall proceed on the basis that the two consents by the parties alluded to above were entered in the understanding that the amount due and payable to the claimants was as pleaded above and no more. What the claimants have attempted to do by alleging otherwise and by claiming higher figures amounts to unilaterally, unprocedurally, and unlawfully setting aside and or amending the said two consents. The court shall not countenance such a move.
27. With the foregoing background, the computations of the balance due and payable becomes easier. One more thing though. Upon the consent entered and adopted by the court, the amount started or ought to have started earning interest at court rates and more so upon default by the respondents. It should not be lost that the subject matter is salary arrears due and owing to the claimants as employees of the respondents. The respondents are thus liable to pay interest on the amounts due plus interest thereon



at court rates, currently at 14% per annum, on reducing balance from the date of the first consent till payment in full. This should be easy to calculate as the claimants have enumerated in a table the amounts paid and the date on which each of the payments was made.

28. The other issue that is for determination is the exchange rate applicable. I am a bit lost as to why the parties and counsel made this such a big issue. However, I gather that this is because the claimants are Indian foreigners who prefer to value the worth of their money in their foreign currency, Indian Rupees. However, the court notes that the contracts of employment between the parties were entered in Kenya and the claimants worked and offered their services in Kenya. Further, the amounts so far paid and received by the claimants have been so paid in the local currency, the Kenya Shilling.
29. In the circumstances, it makes sense that the monies be paid and the claim be settled in the local currency as so far done. However, in case the respondents or any of the garnishees opt to pay in foreign currency, for example the Indian Rupee, the applicable exchange rate shall be the rate applicable at the recipient bank for the claimants as per the details provided for in the consent recorded, as at the time of the actual payment/deposit. In any event, Section 17(1) of the *Employment Act* provides that salaries, wages, and other emoluments for work or services rendered in Kenya shall be paid “in the currency of Kenya.”

### III. Orders

30. Flowing from the foregoing, the court finds and orders as follows –
- a. That the contracts of employment between the claimants and the respondents were entered in Kenya and the services and work performed by the claimants were executed in Kenya and hence the law governing the same, including the currency in which the salaries, wages, emoluments, and or other benefits payable to the claimants by the respondents and or any other payments for and or on their behalf shall be made in the local currency, the Kenya Shilling.
  - b. That the two consents entered by and between the parties through their respective counsel and adopted by the court on 4th and 24th days of October, 2024 are in force and binding on the parties.
  - c. That the two consents were based and premised on the claimed sum of Indian Rupees 83,858,455 equivalent to approximately Kshs150,800,800/= as at the time of filing of the claim on 1st September, 2023.
  - d. That after the respondents failed, refused, and or neglected to settle the debt as per the consent orders the claimants took out execution by way of garnishee proceedings against the 14 garnishes joined in the cause and various amounts have been recovered and the court hereby agrees and adopts the schedule of payments presented by the claimants in the affidavit alluded to above as the correct figures of the amounts so far recovered.
  - e. That the debt started attracting interest at court rates from the date that the first consent was recorded on 4th October, 2023 and continues so attract interest till payment in full.
  - f. That to calculate the balance due and payable, the parties shall simply take the principal sum of Kshs150,800,800/= and add interest thereon at court rates on a reducing balance based on the amounts recovered as enumerated by the claimants in their affidavit.
  - g. That in case the respondents or any of them or any of the garnishees opt to pay in Indian Rupees or in any other foreign currency the applicable exchange rate shall be the rate obtaining at the recipient bank on that particular date and time of the deposit or payment.



- h. That once the entire balance due and payable is paid and or recovered, the parties may agree and record a consent on costs or have the issue of costs heard determined by the court.

**DATED, DELIVERED VIRTUALLY, AND SIGNED AT NAKURU THIS 15<sup>TH</sup> DAY OF OCTOBER, 2024.**

.....

**DAVID NDERITU**

**JUDGE**

