



**Kenya National Union of Nurses v Garissa County Public Service Board (Cause E001 of 2022) [2022] KEELRC 13177 (KLR) (31 October 2022) (Judgment)**

Neutral citation: [2022] KEELRC 13177 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI  
CAUSE E001 OF 2022  
DKN MARETE, J  
OCTOBER 31, 2022**

**BETWEEN**

**KENYA NATIONAL UNION OF NURSES ..... CLAIMANT**

**AND**

**GARISSA COUNTY PUBLIC SERVICE BOARD ..... RESPONDENT**

**JUDGMENT**

1. This matter was originated by way of an Amended Statement of Claim dated 2nd March, 2022. The issue in dispute is therein cited as;

**Unfair labour practices by the Respondent**

2. This matter is not defended, or at all. The Respondent did not show any interest in prosecuting a defence, through and through.
3. The claimant posits the issue in dispute as non-payment of withheld salary of two nursing officers who double as members of the union. These are Mary Kanario Mpekethu, a registered Renal Nurse and Felix Mokandu Angasa, a registered Nurse.
4. The Claimant further case is that the union in a bid to resolve the issue tried to resolve the issue through registration of a trade dispute but this refused to work.
5. The claimant other case is as follows; That Mary Kanario Mpekethu was denied 10 months salary between June 2019 and July 2020 despite being on approved annual leave, maternity leave and study leave. She complained of unfair labour practices and nepotism at the work place vide a letter received by the union on 14th October, 2020. There were interventions by the medical superintendent Garissa County Referral Hospital to the Chief Officer of Health vide a letter dated 28th May, 2020. That she is a qualified renal nurse but has not been re-designated as such on discriminatory terms. She complained of lack of promotion despite the completion of the special course which qualifications ought to place



at Job Group N.Felix Mokandu Angasa was denied 2 months salary despite being on approved annual leave which he did not complete as he was recalled back by the employer. That this is a simple matter which the Respondent has refused to yield despite agreeing to do so at a conciliation meeting. That despite demand in writing, the Respondent has refused to accede to payment. That this is unfair labour practice. That at times the reconciliation were done but this did not yield fruits.

6. She prays thus;

1. An order directing the Respondent to pay Mary Kanario Mpekethu P/No2010164335 her 10 months withheld salary of between the month of June 2019 and April 2020.
2. An order directing the Respondent to pay Felix Mokandu Angasa P/No-201660016188 her 2 months withheld salary of between the month of March and April 2020.
3. An order directing the Respondent to promote Mary Kanario Mpekethu P/No-2010164335 to the rightful job group, which is Job Group N.
4. Any other order the court may deem fit to meet the ends of justice to issue.
5. That, cost of this suit be borne by the respondents.
6. An order restraining the Respondent, its Agents, servants, and/or Assigns and/or servants from victimizing the grievant Nurses herein on account of this suit.

**The issues for determination therefore are;**

1. Whether the claimant is entitled to the relief sought.
2. Who bears the costs of this cause.

**The 1st issue for determination is whether the claimant is entitled to the relief sought. The claimant in her written submissions dated 1st March, 2022 reiterates her case and concludes as follows;**

Flowing from the above submissions, the claimant has demonstrated and proved by way of facts and documentary evidence in the list of documents that the Respondent denied Mary Kanario Mpekethu who is a Senior Registered Nurse salary during her maternity and study leave and despite her higher qualification after completing a specialized course in Renal Nursing, she was discriminated against and not placed to her rightful job Group.

That, Felix Mokandu Angasa a registered Nursing officer was denied salary for two months' despite being on duty on both months.

That, despite effecting service to the Respondent on several occasions, they have not filed any defence to the suit and as such we humbly submit that our amended statement of claim is merited and should be allowed with costs against the Respondent.

- 7 To me, this is a straight forward matter. It is no wonder that it is not defended whatsoever. I would have wished to see the kind of defence that would have been offered in this situation of blatant abuse of office and duty.
- 8 In the absence of any defence, and on the premises of the abundant case of the claimant, I find that the claimant is entitled to the relief sought.

I am therefore inclined to allow the claim and order relief as follows;



- i. The Respondent be and is hereby ordered to meet and pay Mary Kanario Mpekethu P/No 2010164335 her 10 months withheld salary for the months of June 2019 to April 2020.
- ii. The Respondent be and is hereby ordered to meet and pay Felix Mokandu Angasa P/ No-201660016188 his 2 months withheld salary for the months of March and April 2020.
- iii. That the Respondent be and is hereby ordered to instantly promote Mary Kanario Mpekethu P/No-2010164335 to Job Group N.
- iv. That the Respondent be and is hereby ordered to meet and pay Mary Kanairo Mpekethu P/ No-2010164335 all the difference in salary and emoluments between Job Group N and her current salary for all the time of unlawful denial of promotion to the date of such payment.
- v. An order be and is hereby issued restraining the Respondent, its Agents, servants, and/or Assigns and/or servants from victimizing the grievant Nurses herein on account of this suit.
- vi. The cost of this cause shall be borne by the Respondent.

**DATED AND DELIVERED AT NYERI THIS 31ST DAY OF OCTOBER 2022.**

**D.K.Njagi Marete**

**JUDGE**

**Appearances**

**1. Mr. Kinoti for the Claimant Union.**

**2. No appearance for the Respondent.**

