



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 51 OF 2020

KENYA NATIONAL UNION OF NURSES.....CLAIMANT

VERSUS

BUNGOMA COUNTY PUBLIC SERVICE BOARD.....RESPONDENT

RULING

1. For determination is a Motion by the Kenya National Union of Nurses (the Union) against the County Public Service Board, Bungoma (the Board) seeking orders:

1. ...

2. THAT an interim order be and is hereby issue barring the Respondent from hiring nurses on a contract basis or any other term other than on permanent and pensionable terms.

3. THAT an interim order be and is hereby issued directing the Respondent to harmonise the salaries and allowances of the contract nurses in line with the Salaries and Remuneration Commission guidelines in respect to individual academic qualifications pending the hearing and determination of this application and main suit.

4. THAT an order be and is hereby issued restraining the Respondent from any act of victimisation including termination of existing contracts and dismissing the nurses on account of this suit pending the hearing and determination of this application and the main suit.

5. THAT this application and the main suit be merged and proceed by way of documentation as provided for under Rule 21 of the Employment and Labour Relations Court (Procedure) Rules, 2016.

6. THAT this Court be pleased to grant any other order that it may deem fit and just to meet the ends of justice.

7. THAT costs of this application be provided for.

2. When the Motion was placed before the Court on 16 July 2020, it directed that affidavits and submissions be filed and exchanged within defined timelines. The Ruling was to be on notice.

3. The Union caused to be filed on 26 August 2020 a further affidavit sworn by its Industrial Relations Officer.

4. The next time the Motion was placed before the Court on 24 November 2020, the Court noted that there was no evidence that the Board had been served with the application. The Court directed the Union to file an affidavit of service.

5. The affidavit of service was filed on 8 December 2020, and it deposed that the Board had been served on 16 July 2020. The service was acknowledged.

6. Despite acknowledging service, the Board failed to file any documents. Consequently, the Court directed that it would deliver a Ruling today.

7. The Court has keenly looked at the unopposed application and concluded that the orders sought should not be granted at this interlocutory stage because of the following reasons.

8. One, the Employment Act, 2007 recognises different types of contract, of definite duration and indefinite duration.

9. *Prima facie*, therefore, there is nothing unlawful about fixed-term contracts.

10. Two, the Union has a recognition agreement with the Board and the subject orders sought herein are everyday items for negotiation between a trade union and the employer.

11. The recognition agreement has outlined dispute resolution mechanisms in the first instance. The mechanisms supplement those provided for in Part VIII of the Labour Relations Act.

12. There was no disclosure from the Union as to whether they had exhausted those avenues.

13. Lastly, the Union did not disclose the manner its members had been victimised or stood to be victimised because of the instant litigation.

Conclusion and Orders

14. For the above reasons, the Court orders the Motion dated 14 July 2020 dismissed with no order on costs.

Delivered through Microsoft teams, dated and signed in Kisumu on this 24th day of February 2021.

Radido Stephen, MCI Arb

Judge

Appearances

For Union Mr. Omulama, Industrial Relations Officer

For Respondent did not participate

Court Assistant Chrispo Aura