



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

PETITION NO. 48 OF 2020

KENYA AVIATION WORKERS UNION.....PETITIONER

VERSUS

KENYA AIRPORTS AUTHORITY.....1ST RESPONDENT

SALARIES AND REMUNERATION COMMITTEE.....2ND RESPONDENT

JUDGMENT

1. The Union filed the Petition dated 2nd April 2020 on behalf of all unionisable employees working for Kenya Airports Authority, the 1st Respondent. The Petitioner is seeking that this Honorable Court issues the following orders and declarations:-

i) A declaration that the 1st Respondent's employees are not state or public officers hence the 2nd Respondent does not have authority or locus standi to set, regulate, review, advise on the remuneration and benefits of the employees of the 1st Respondent and any purported arrogation of such locus or authority and consequent actions of the 2nd Respondent including but not limited to setting, reviewing, advising and supervision of remuneration and benefits accorded to the 1st Respondent by Collective Bargaining Agreements between the Petitioner and the Respondent are in express violation of Article 2, 3, 10, 41, 50(1), 230 of the Constitution and provision of the Salaries and Remuneration Commission Act hence illegal, unlawful, unconstitutional, null and void.

ii) A declaration that the 1st Respondent as constituted under the Kenya Authority Act Cap 395 of the Laws of Kenya does not fall under the mandate of the 2nd Respondent set out under Article 230 of the Constitution and the Salaries and Remuneration Commission Act.

iii) A declaration that the 1st Respondent's Board of Directors decision by the 1st Respondent purporting to disapprove the agreed basic pay increment of 7% for 2016, 7% for 2017, 2% for 2018 and 2% for 2019 in addition to annual increments agreed by the Petitioner and the 1st Respondent on 8th August 2019 and purported downward variation of the said terms to 6% for 2016, 6% for 2017, 6% for 2018, and 6% for 2019 post agreement of parties as a precondition for the 1st Respondent to execute the fresh CBA with the Petitioner for the period between 1st January 2016 to 30th June 2019 amounts to unfair labour practices, violation of the employees' rights guaranteed under Article 41(2) of the Constitution and the Right to Organize and Collective Bargaining, 1949 (No. 98) and by virtue of Article 2 (6) of the Constitution hence unconstitutional.

iv) An Order of Certiorari to call to this Court to call, remove, deliver up to this Honourable Court and quash the decision of the 2nd Respondent to the 1st Respondent communicated by letters ref: SRC/TS/KAA/3/17/39(20) dated 14th August 2019, ref: SRC/TS/KAA/3/17/39(22) dated 20th August 2019 and ref: SRC/TS/KAA/3/17/39(25) dated 13th December 2019 and all consequential decisions arising therefrom which purport to set, review, advise, impose and or in any way interfere with the remuneration and benefits of the 1st Respondents employees and or the terms of CBA voluntarily negotiated and agreed between the Petitioner and the 1st Respondent.

v) An Order of Certiorari to call to this Court to call, remove, deliver up to this Honourable Court and quash the decision the 1st Respondent's Board of Directors decision purporting to disapprove the agreed basic pay increment of 7% for 2016, 7% for 2017, 2% for 2018 and 2% for 2019 in addition to annual increments agreed by the Petitioner and the 1st Respondent on 8th August 2019 and purported downward variation of the said terms to 6% for 2016, 6% for 2017, 6% for 2018, and 6% for 2019 post agreement of parties as a precondition for the 1st respondent to execute the fresh CBA with the Petitioner for the period between 1st January 2016 to 30th June 2019.

vi) *An order of permanent injunction restraining the 1st Respondent by itself, through its servants officers and or anyone claiming under it from purporting to set, regulate, review, advise, vary and or impose its decisions on the remuneration and benefits of the employees of the 1st Respondent or in any way impeding negotiation, execution, registration and or interfering with the right of the Petitioner and 1st Respondent to freely negotiate Collective Bargaining Agreements including but not limited to execution of a freely, negotiated and agreed CBA terms agreed between the Petitioner and the 1st Respondent on 8th August 2019.*

vii) *An order that the Collective Bargaining Agreement (the CBA) between the Petitioner and Respondent agreed upon on 8th August 2019 be signed by the 1st Respondent and Petitioner and registered with agreed basic pay increment of 7% for 2016, 7% for 2017, 2% for 2018 and 2% for 2019 in addition to annual increments agreed by the Petitioner and the 1st Respondent on 8th August 2019 and without any unilateral variations thereto or conditions inconsistent with the agreed terms of the said CBA by any of the parties thereto.*

viii) *Costs of the Petition*

ix) *Any other relief that the Court may deem fit to grant in the circumstances of the Petition.*

2. The Petitioner avers that it is a recognized union for all unionisable employees in the aviation industry by the 1st Respondent having executed Recognition Agreement dated 22nd April 2014 with the Respondent herein. That it consequently executed a CBA with the 1st Respondent for the period 2014/2015 providing for terms and conditions of employment of all its members including those working for the 1st Respondent and the same was duly registered in accordance with the law. That though the present CBA with the 1st Respondent expired on 31st December 2015, Clause 62.2 of the said CBA provides that the terms of the said CBA shall continue to be in force until parties execute a fresh CBA. It avers that on diverse dates in the year 2015 and February 2020 it negotiated and on 8th August 2019, agreed on fresh CBA terms applicable to all unionisable employees of the 1st Respondent for the period between 1st January 2016 to 30th June 2019. Further, parties agreed to execute the said fresh CBA on 14th August 2019 at about 11:00 am at the 1st Respondent's offices so as to facilitate registration thereof as per law. That however on the said agreed date the 1st Respondent alleged it had forwarded the agreed fresh CBA to the 2nd Respondent for advice and approval pursuant to the 2nd Respondent's directive and guidelines dated 21st March 2014 and 4th July 2014 on *Determination and Review of Remuneration in the Public Service*. That the Petitioner received a letter from the 1st Respondent on or about 23rd August 2019 advising that the 2nd Respondent had rejected the fresh CBA negotiation between the Petitioner and the 1st Respondent on grounds that the same had been done without prior advise of the 2nd Respondent. That consequent to this directive, the 1st Respondent invited the Petitioner for a meeting on 12th September 2019 to deliberate on a program to comply with the 2nd Respondent's regulations.

3. That the 1st Respondent thereafter resubmitted the agreed Fresh CBA to the 2nd Respondent on 25th September 2019 for approval and the 2nd Respondent advised and directed the 1st Respondent by a letter dated 13th December 2019 to re-negotiate a fresh CBA within some expressly set parameters. The Petitioner avers that this directive of 13th December 2019 by the 2nd Respondent clearly removed the 1st Respondent's independence in the negotiations and straightjacketed the 1st Respondent into communicating and imposing the 2nd Respondent's decisions, recommendations and advise onto the CBA negotiated with the Petitioner. That the 1st Respondent then consequently purported to renegotiate the basic pay downwards to 6% inclusive of annual increment for the said respective years and required the Petitioner to accept the new offer and execute a fresh CBA with the said variations. That the 1st Respondent based its reasons for varying the basic pay to be that its Board of Directors did not approve the earlier agreed basic pay rate of 7% for the year 2016 and 2017. That the said reason was however an attempt to re-write the agreed CBA post agreement as the 1st Respondent had never at any time alleged that the said agreement is subject to its Boards approval. That the Petitioner thus declined the purported downward variation of the basic pay rate as the item had already been agreed upon at the meeting of 8th August 2019 and that even the purported variation was contrary to the 2nd Respondent's variation. It is the Petitioner's averment that the 1st Respondent has declined to execute the negotiated and agreed fresh CBA and insists on proceeding with execution of a varied CBA dictated by the terms stipulated by the 2nd Respondent and or its management. It asserts that the 1st Respondent's conditions will lead to illegal salary recoveries from the unionisable employees for payments made from the year 2016 and thus cause a negative salary increment for some employees, contrary to Part IV of the Employment Act on protection of employees salary and wages. It further avers that the 2nd Respondent's purported advice or directives to or over the 1st Respondent is ultra vires jurisdiction as the 1st Respondent is not under the mandate, province and constitutional or statutory supervision of the 2nd Respondent. Simply put, the 2nd Respondent does not have locus to advice, recommend and or supervise the 1st Respondent's negotiations of a CBA. The Petitioner avers that the 1st Respondent's purported variation of a voluntarily negotiated and agreed fresh CBA is therefore an afterthought, illegal and unfair labour practice and that considering the current operating CBA expired on 31st December 2015, the indefinite delay is without reasonable cause. The Petitioner asserts that unless the foregoing acts are restrained by the Court, the Petitioner's potential members will suffer gross miscarriage of justice and substantial loss.

4. It is the Petitioner's averment that the purported imposition of authority by the 2nd Respondent in the negotiations of a CBA between the Petitioner and the 1st Respondent and further the refusal by the 1st Respondent to execute the agreed upon CBA violates the Petitioner's members' rights to fair labour practices, fair pay for work done and reasonable working conditions guaranteed under Article 41(1) and (2) of the Constitution. It is also the Petitioner's averment that the Respondents' purported actions also violate Article 50(1) of the Constitution and Article 4 of the International Labour Organization Convention No. 98 which guarantees resolution of disputes in accordance with the law and the right to have CBA's negotiated freely, independently and voluntarily without interference by government agencies. In the Supporting Affidavit, the Petitioner's Secretary General, Moss Ndiema avers that the Respondent are cognizant of the direction and guidance by this Court in **National Hospital Insurance Fund, Management Board v Kenya Union of Commercial, Food and Allied Workers & 2 Others [2016] eKLR** as well as the advisory opinion dated 11th October 2012 by the Attorney General to the State Corporations Advisory Committee (where the 1st Respondent is a member) that the 2nd Respondent's jurisdiction and mandate does not extend to matters concerning CBAs relating to non-state officers and non-public servants.

5. The 1st Respondent in response filed a Replying Affidavit sworn by its General Manager Human Resource Development, Anthony Njagi. He avers on behalf of the 1st Respondent that before commencement of negotiations for the next cycle CBA, the 1st Respondent was required to forward the Petitioner's proposal as well as its counter-proposal to the 2nd Respondent for guidelines and approval of the parameters. That the 1st Respondent could only complete the negotiation within the guidelines and parameters provided by the 2nd Respondent and that the input of the Board of Directors of the 1st Respondent was further within the 2nd Respondent's guidelines and the 1st Respondent's ability to pay. That the Petitioner was also fully conversant and agreed with the reference to the said guidelines as demonstrated in the Minutes of 8th August 2019 and is therefore estopped from challenging the negotiations carried out in line with the parameters and guidelines of the 2nd Respondent.

He further averred that the juridical and substantive nature of the 1st Respondent extends to state and public officers particularly in an entity established as a service outfit and not for profit making, as was laid down by Lenaola J., as he then was, in **Nairobi High Court Petition No. 294 of 2013 – Kenya Union of Domestic, Hotels, Educational Institutions and Allied Workers (KUDHEIHA Workers) v Salaries and Remuneration Commission & Another [2014] eKLR**. That the said advisory opinion of 11th October 2012 by the Attorney General has since been side-stepped by the Court in various decided cases including **Petition No. 294 of 2013 (supra); Nairobi ELRC No. 2029 of 2015 – Banking Insurance & Finance Union v Kenya Post Office Savings Bank Ltd [2017] eKLR** (per Ndolo J.) and **National Union of Water & Sewerage Employees v Mathira Water and Sanitation Company Limited & 2 Others [2013] eKLR** (per Rika J.) on the mandate of the SRC. The 1st Respondent asserts that the Petitioner must thus allow the entire process of negotiations to proceed and conclude with the necessary statutory and regulatory approval so as to enable its members enjoy the terms and conditions of employment therein. The 1st Respondent prays for the Petition to be dismissed with costs to the 1st Respondent.

6. The 2nd Respondent, Salaries & Remuneration Commission also filed a Replying Affidavit sworn by the Commission Secretary, Anne R. Gitau. She avers that the 2nd Respondent has a constitutional mandate as under Article 230 and that its objects and authority as an independent Commission are set out under Article 249(1) to include protecting the sovereignty of the people and securing observance of all state organs of democratic values and principles. She admits that the 1st Respondent indeed sought advice from the 2nd Respondent, which communication was responded to with advice and various correspondence guiding the 1st Respondent and recommending certain guidelines for the collective bargaining negotiations. That the 2nd Respondent is yet to receive a request from the 1st Respondent for review on its advisory and has also not prevented the Petitioner from engaging, negotiating or signing a CBA. She denies that the 2nd Respondent acted in breach of Article 41 of the Constitution and avers that the 2nd Respondent was merely exercising its constitutional mandate. Further, that the advice by the 2nd Respondent is binding upon the Petitioner as provided for in Article 259(1) as follows:

"If a function or power conferred on a person under this Constitution is exercisable by the person only or advice or recommendation, with the approval or consent of or on consultation with another person, the function may be performed or the power exercised only on that advice, recommendation, with that approval or consent, or after that consultation except to the extent that this consultation provide otherwise"

She further avers that registration of the CBA between the Parties was done without the advice or consultation of the 2nd Respondent, in direct contravention of the law and that the Petitioner has not convinced the Court in any way that the letters by the 2nd Respondent violate Article 41(5) of the Constitution. That this Honourable Court is also legally bound to make reference of the 2nd Respondent's guidelines as directed under Section 15(6) of the Industrial Court Act, 2011.

7. The Petitioner filed a Supplementary Affidavit sworn by Moss Ndiema who avers that the case law relied upon by the 1st Respondent is distinguishable and irrelevant to the facts in this case. That the 2nd Respondent's Replying Affidavit clearly illustrates dictation of the 1st Respondent on terms of negotiation and CBA while the 1st Respondent's Replying Affidavit is a distortion and suppression of material facts with intent to mislead the Court. That when the 1st Respondent proposed terms informed by the 2nd Respondent's guidance, the Petitioner engaging in a free and fair negotiation looked at and concluded they were reasonable basis to commence negotiations but did not at any time accept the same as binding or acquiesce to the 2nd Respondent's jurisdiction on the matter. Further, parties did not at any time agree to vary what had already been agreed and that the dispute arose because the 1st Respondent introduced an agreement of basic pay inclusive of annual increment contrary to the earlier agreement by parties awaiting execution. He further avers that he is aware the negotiated and agreed rates on house allowance were implemented immediately in December 2019 and apply to date but the basic pay increment is still pending to date. That the 1st Respondent has refused to sign the CBA as agreed by parties and insists on post agreement terms of 6% increment on basic pay inclusive of annual increment to apply for 3 ½ years period. He avers that the purported call to renegotiate agreed terms of CBA leads to unfair labour practices which circumstances contravene public policy.

8. The Petition was dispensed by way of written submissions. The Petitioner's submissions were to the effect that the 1st Respondent is established as a body corporate with perpetual succession with functions, obligations and powers under the Kenya Airports Act Cap 395 Laws of Kenya. That it is by reason of the 1st Respondent's statutory establishment and operations that the 1st Respondent's employees are neither state officers nor public officers within the meaning of Article 260 of the Constitution of Kenya. That the 1st Respondent's employees are also not servants of the National or County Governments or paid from the Consolidated Fund and the 1st Respondent is hence not obligated to seek the 2nd Respondent's approval, recommendation or advise in relation to decisions affecting remuneration and or benefits paid to the 1st Respondent's employees. It submits that the 1st Respondent is a State Corporation but not a state organ since it is not established under the Constitution. That the advisory opinion dated 11th October 2012 by the Attorney General opined that the definition of a public officer in Article 260 of the Constitution does not include an employee of a state corporation from the definition of the terms "public service" and "state organ". The Petitioner further submits that the 1st Respondent is thus a Commercial Corporation as was held by Abuodha J. in **Nairobi Cause Number 1882 of 2014 – Chemilil Sugar Company Limited & 2 Others v Kenya Union of Sugar Plantation and**

Allied Workers [2014] eKLR and which case the Petitioner fully relies on.

9. The Petitioner submits that the 1st Respondent does not get its monies directly from Parliament but through its line ministry, Ministry of Transport, Infrastructure, Housing and Urban Development, and which funding is not exclusive as the 1st Respondent also generates its own money from other sources as enumerated in Section 17C of the Kenya Airports Authority Act. That for the funding from the Ministry, the 1st Respondent has to submit estimates of its revenue and expenditure for the coming financial year, accompanied by proposals for funding of the projects to be undertaken. The Petitioner cites the case of **Katiba Institute & Another v Attorney General & Another [2020] eKLR** where the three judge bench analysed the statutory definition of ‘public money’ and funding of state corporations and found that state corporations are funded using public funds by the Treasury through line ministries. The bench further held that funding notwithstanding, state corporations and parastatals do not qualify as offices in the public service, State organs or bodies established under the Constitution. The Petitioner submits that it is for this reason that the 1st Respondent’s employees are neither public nor state officers and their remuneration is thus outside the mandate of the 2nd Respondent.

10. As to whether or not the 2nd Respondent has the mandate to advise in the CBA negotiations between the Petitioner and the 1st Respondent, the Petitioner fully relies on the observation of the Court in **National Hospital Insurance Fund Management Board v Kenya Union of Commercial Food and Allied Worker & 2 Others [2016] eKLR**. That the interference by the 2nd Respondent in negotiations and execution of a CBA-post agreement was also recently dealt with by the Court in **National Hospital Insurance Fund (NHIF) v Kenya Union of Commercial Food and Allied Workers (KUCFAW) [2020] eKLR** where it held that advice from SRC is supposed to be obtained before negotiations so that the negotiations are held within the mandate of the recommendations of SRC and that the claimant having negotiated and concluded the CBA with the respondent, cannot renege on the same by seeking advice of SRC after the fact. The said Court went on to order that the CBA be signed and registered as agreed between the claimant and the respondent. The Petitioner submits that it had already negotiated with the 1st Respondent and come up with an agreement when the 2nd Respondent arrogated its mandate and purported to advise the 1st Respondent on the content of the voluntarily agreed CBA. It thus prays to this Honorable Court to allow the Petition herein as prayed to meet the ends of justice and fairness because the same seeks to uphold the rights of constitutionally guaranteed workers.

11. The 1st Respondent submits it does not deny there was a subsisting Collective Agreement for the period of 2014/ 2015 because at the time the Agreement was negotiated, the structures and guidelines from the SRC were not yet in place. That it became necessary to abide by the provisions of the Salaries and Remuneration Commissions Act, 2011 by involving the 2nd Respondent in the negotiations of the CBA for the next cycle CBA. That the issue whether or not the employees of the 1st Respondent are state officers or public officers for the purposes of construction of the provisions of the SRC Act has been a contentious issue since the operationalization of the 2nd Respondent. That judicial interpretation has settled that one of the characteristics to determine whether an entity is a state office is whether or not it looks up to the National Treasury for partial or full funding. (see **Nairobi High Court Petition No. 294 of 2013 - KUDHEIHA v SRC & Anor**) (*supra*). That the purposive trajectory taken by the Courts is that recurrent expenditure in a government set-up must be reasonable, fair and within permissible limits in terms of equity and sustainability.

12. The 1st Respondent submits that Clauses in the Collective Agreement where the parties were able to agree on were within the terms and guidelines set out by the 2nd Respondent. That where they did not agree was not because the Petitioner was opposed to the involvement of the 2nd Respondent, but rather because their expectations were not met. That it was only after the SRC made reservations in the salary increments and the general wage bill, sustainability and consistency that the Petitioner turned around and challenged the involvement of the SRC. That the Petitioner is therefore not being honest in its position late in the day and is coming to Court seeking equity but not being able to demonstrate equity and that the Petitioner cannot come to the table of equity with unclean hands. The 1st Respondent submits that this Court in a recent decision where the clauses on financial allocation was determined with the input of the SRC observed that issues to do with retirement age must be determined on the basis and strength of public policy particularly when the taxpayer is called upon to shoulder the obligation. (see **Nairobi ELRC CBA/1/2020 – Inter-Public Universities Consultative Council Forum v Kenya Union of Domestic, Hotels, Education Institutions, Hospitals and Allied Workers**). It urges this Court to take a similar position and make a finding that the salaries of state officers or anybody whose remuneration comes from the National Treasury must conform to principles of equity and public policy. It submits that the Court ought to further find that the entire process of negotiations of Collective Agreements must proceed and conclude with the necessary statutory and regulatory approvals.

13. The 2nd Respondent submits that the 1st Respondent is a State Corporation wholly owned by the Government of Kenya and established under the Kenya Airports Authority Act Cap 395 of the Laws of Kenya. That the 1st Respondent manages all the international and local airports in Kenya as well as small airstrips on behalf of the Government and the people of Kenya and that notably, the 1st Respondent’s Chairman is appointed by the President. Further, members of the 1st Respondent’s Board include the Permanent Secretaries Ministry of Transport, Treasury and a representative from the Inspector General, State Corporations. That the legal status of Commercial State Corporations varies from being a part of the government to being a limited liability company with the State as the sole shareholder. That Commercial State Corporations must therefore, adhere to the Constitution, the Public Finance Management Act, Public Audit Act, Public Officer Ethics Act, Ethics and Anti-Corruption Act and the Leadership and Integrity Act among other laws that apply to the public service. The 2nd Respondent submits that the establishment of the 1st Respondent, its mandate, composition and manner of appointment of its board clearly brings out the status of a public entity and part of the public service as defined in Article 260 of the Constitution of Kenya and the Public Officers’ Act, 2003. That the 1st Respondent is a State Corporation as per Section 2 of the State Corporations Act and that Article 232(2)(b) of the Constitution which provides the values and principles of public service expressly states that the values and principles apply to state organs in both levels of government and all State corporations. That the Petitioner’s members are Public Officers, performing a public duty and that their remuneration and benefits are therefore subject to the 2nd Respondent’s advice as provided in Article 230(4)(b) of the Constitution. That in addition, the 1st Respondent is a public institution administering public money in terms of the Exchequer and Audit Act and falls back on the government for financial bailouts from public funds in the event of any financial shortfall. The 2nd Respondent urges this Honourable Court to take judicial notice of the **Business Daily** of 30th June 2020 wherein the 1st Respondent’s Managing Director one Alex Gitari had informed the international airline community that it was working on cost cutting measures due to the COVID-19 pandemic and would be seeking financial help from the government of Kenya.

14. It is further submitted by the 2nd Respondent that to find that the Petitioner's members are not public officers performing a public service destroys the concept of public service and such interpretation is inimical to public service. That the Constitution must be looked at as a whole and it would be dangerous to consider any particular Article in the Constitution in isolation from all others, as it would lead to inconsistency and confusion. That the Supreme Court of Kenya has pronounced itself on a holistic interpretation of the Constitution **In the Matter of the Kenya National Commission on Human Rights, Supreme Court Advisory Opinion No.1 of 2012 [2014] eKLR**. The 2nd Respondent submits that the negotiations and intended registration of the instant CBA between the Petitioner and 1st Respondent is tainted with illegality and that this position was upheld in the cases of **Kenya Petroleum Oil Workers Union v Kenya Pipeline Company Ltd & 2 Others [2016] eKLR** and **Nairobi City County Government v Kenya County Government Workers Union; Salaries and Remuneration Commission (Interested Party/Applicant) [2019] eKLR**. That the advice of SRC is mandatory and binding as was upheld in the case of **Teachers Service Commission v Kenya National Union of Teachers (KNUT) & 3 Others [2015] eKLR** and that the same is also necessary for purposes of negotiation and conclusion of the CBA by the Petitioner and 1st Respondent. It is the 2nd Respondent's submission that the decision in **National Hospital Insurance Fund, Management Board v Kenya Union of Commercial, Food and Allied Workers & 2 Others (supra)** was appealed against and is pending before the Court of Appeal in **Nairobi Civil Appeal No. 156 of 2016, Salaries and Remuneration Commission v National Hospital Insurance Fund**. That the Petitioner's submission on the said decision being binding to this Court is misleading and this Court should consider the decision in **Nairobi High Court Constitutional Petition Nos. 208 of 2019 Consolidated with Petition Nos. 185 of 2019 and 339 of 2019 Salaries and Remuneration Commission, Okiya Omtatah Okoiti v Parliamentary Service Commission & Others** where a three-judge bench addressed the question of whether a decision by a court of concurrent jurisdiction was binding on the court and held that the same is not binding but persuasive. It submits that this Court should thus take caution in applying the **NHIF, Management Board v Kenya Union of Commercial, Food and Allied Workers** because of the pending appeal on the judgment.

15. The 2nd Respondent submitted further that the Petitioner seeks to quash the decisions of the 2nd Respondent contained in the letters dated 14th August 2019, 20th August 2019 and 13th December 2019 but an order of Certiorari can only issue if there has been a breach of natural justice by the 2nd Respondent (see **Kenya National Examination Council v Republic Ex-Parte Geoffrey Gathenji & 9 Others [1997] eKLR**). It submits that its decisions were made pursuant to the Constitution and adhered to the rules of natural justice as there was no bias and that the 1st Respondent was fully involved in the decisions. It prays for the Petition to be dismissed with costs to the 2nd Respondent.

16. The dispute herein is on the application of the advisory by the Salaries and Remuneration Commission. Article 230(4) and (5) provides:-

230(4) The powers and functions of the Salaries and Remuneration Commission shall be 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.

(5) In performing its functions, the Commission shall take the following principles into account

(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 recognise productivity and performance; and

(d) transparency and fairness.

17. The Kenya Airports Authority is a government owned enterprise that runs, maintains and operates the national airstrips and airports both international and local. As such it fits within the definition of a state organ. The remuneration of workers of the 1st Respondent therefore falls within the purview of the Salaries and Remuneration Commission as they are paid out of money collected by the exchequer or in other words, they are paid out of the public purse. Whereas the SRC has a role to play in the determination of salaries of the state officers and all public officers, the interposition of SRC is never intended to be after the negotiations. It must be part and parcel of the negotiations and advisory should be sought before the conclusion of the negotiations. To operate as the parties did in this case is despicable as there were hopes raised only to be dashed by the SRC recommendation on the reviews of salary proposed. The order of doing things is that SRC should be involved from the onset in order to give input prior to the conclusion. In this case the errors committed in the past need not be repeated as the new CBA cycle would of necessity include SRC input prior to the registration of the new CBA. In the premises, given the foregoing, the Petition is dismissed with no order as to costs.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 2ND DAY OF JUNE 2021

Nzioki wa Makau

JUDGE