



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 29 OF 2019

KENYA NATIONAL UNION OF NURSES.....CLAIMANT

v

NYAMIRA COUNTY PUBLIC SERVICE

BOARD.....RESPONDENT

JUDGMENT

1. The Kenya National Union of Nurses (the Union) sued the County Public Service Board, Nyamira (the Board) on 25 March 2019 and the Issues in Dispute were stated as:

(i) Withheld salaries for July and August 2018.

(ii) Breach of the return to work agreement.

2. The Board filed a Reply to the Statement of Claim on 25 April 2019, in which amongst the defences raised was that the Cause was *res judicata*.

3. The Court heard the plea of *res judicata* and dismissed the objection in a Ruling delivered on 4 November 2019.

4. On a date that is not clear from the record, the Court directed that the parties present witnesses on 28 July 2020, but the hearing was adjourned to 30 July 2020.

5. However, the hearing could not proceed because of internet challenges. The hearing commenced on 16 December 2020 and was concluded on 15 March 2021.

6. Pursuant to Court directives, the Union filed its submissions on 16 April 2021, while the Board filed its submissions on 17 May 2021.

7. The Court has considered the pleadings, evidence and submissions.

8. The facts are largely not in dispute.

9. Sometime in June 2018, the Union issued a strike notice to the Board after the Board failed to concede to certain of its demands.

10. On 23 August 2018, the Union and the Board signed a Return to Work Formula, and one of the terms agreed to was:

(1)

(2). The County Government of Nyamira further undertakes to follow up with the Controller of Budget with the delayed salaries with a view of paying the same in August 2018 payroll.

(3). ...

11. The Union's case was that the Board had failed to fulfil the agreement to pay salaries for July and August 2018 to some 429 nurses.

12. The Board, however, contended that the Union had failed to prove its case as contemplated by sections 107(1) and 108 of the Evidence

Act because the Union had not produced in Court the names and/or particulars of the nurses who had allegedly not been paid.

13. The Union did not provide the particulars of its members whose salaries for June, July and August 2018 had not been paid during the hearing.

14. An attempt was made to sneak the names with the submissions.

15. The names and details comprise evidence that had to be proved at the hearing. Such evidence cannot be produced after the close of the hearing.

16. Further, the Union did not seek any leave to introduce the evidence filed with the submissions.

17. The Court cannot, therefore, consider the same.

18. The Court will agree with the Board that the Union did not discharge the evidential burden expected of it.

19. The Cause is dismissed.

20. In light of the social partnership between the parties, each party to bear its own costs.

21. The Court regrets that this judgment could not be delivered as scheduled on 3 November 2021, due to other official engagements.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 19TH DAY OF NOVEMBER 2021.

Radido Stephen, MCI Arb

Judge

Appearances

For the Union Mr Panyako/Ms Wangari

For Respondent Nyachiro Nyagaka & Co. Advocates

Court Assistant Chrispo Aura