



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 51 OF 2020

KENYA NATIONAL UNION OF NURSES.....CLAIMANT

v

BUNGOMA COUNTY PUBLIC SERVICE BOARD.....RESPONDENT

JUDGMENT

1. The Kenya National Union of Nurses (the Union) sued the County Public Service Board (the Board) on 16 July 2020, and the issue in dispute was stated as:

- (1) Unfair labour practices by the Respondent.
- (2) Failure to engage 177 nurses on permanent and pensionable terms.

2. The Union prayed for the following remedies:

- (1) THAT this Honourable Court issues a declaration order that employment of nurses on short term contracts by County Governments is unlawful as the jobs and responsibilities of nursing are permanent and pensionable in nature.
- (2) THAT this Honourable Court issues an order directing the Respondent to convert the terms of all nurses who are employed on contract into permanent and pensionable terms in line with their qualifications.
- (3) THAT this Honourable be pleased to issue an order directing the Respondent to pay in arrears the difference in payment of basic salary and allowances accruing from underpayment of the Grievant nurses.
- (4) THAT this Honourable Court be pleased to grant any other orders as it deems fit and just to meet the ends of justice.
- (5) THAT costs of this suit be borne by the Respondent.

3. Despite service of Notice of Summons and Statement of Claim physically on 20 July 2020, the Board did not enter appearance or file a Response.

4. When the Cause came up for directions on 24 May 2021, the Union indicated that it wished to proceed by way of the record and submissions to be filed. The Union filed the submissions on 30 June 2021.

5. The Court has considered the record and the submissions.

6. The dispute presented by the Union revolve around what are ordinarily called *terms and conditions of service*.

7. The Union has a recognition agreement with the Board and the Agreement has outlined at clause 2(a) negotiation mechanisms in respect of the terms and conditions of service.

8. Clause 3(b),(c) and (d) of the Agreement requires either party to refer a *trade dispute* on terms and conditions of service to negotiations where the parties fail to reach mutual agreement.

9. The Union did not disclose whether it had taken advantage of the procedure set out in the agreement before moving the Court.

10. Part VIII of the Labour Relations Act has also given statutory anchor to alternative dispute resolution within the field of industrial

