



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS OF KENYA AT NAIROBI

CAUSE NO 1998 OF 2018

KENYA NATIONAL UNION OF NURSESCLAIMANT

VERSUS

SALARIES AND REMUNERATION COMMISSION.....1ST RESPONDENT

MOI TEACHING AND REFERRAL HOSPITAL BOARD.....2ND RESPONDENT

COUNCIL OF GOVERNORS3RD RESPONDENT

PUBLIC SERVICE COMMISSION.....4TH RESPONDENT

THE PRINCIPAL SECRETARY MINISTRY OF HEALTH.....5TH RESPONDENT

COUNTRY PUBLIC SERVICE BOARDS CONSULTATIVE

FORUM6TH RESPONDENT

CABINET SECRETARY, MINISTRY OF EAST AFRICA

COMMUNITY, LABOUR AND SOCIAL PROTECTION..... 7TH RESPONDENT

THE NURSING COUNCIL OF KENYA8TH RESPONDENT

J U D G M E N T

1. By an amended claim filed on 2nd October,2018 the Claimant pleaded that the 1st respondent released a report of job evaluation exercise for Public Servants in the National Government and which informed the Ministry of Public Service

Youth and Genders Affairs, that in executing the mandate the 1st respondent was constitutionally obligated under article 230(5) to take into account among others, the need to ensure that the public service is able to attract and retain the skills required to execute their functions, need to recognize productivity and performance and transparency and fairness.

2. According to the Claimant, contrary to the said mandatory requirements, the 1st respondent failed to involve critical and key stakeholders and went a step further in issuing two different basic salary structures for Moi Teaching and Referral Hospital (MTRH) and Kenyatta National Hospital (KNH) when the two institutions are legally classified at the same level and offer similar services. Further, contrary to the said mandatory requirements the 1st respondent failed to both involve critical and key stakeholders and went a step further in issuing two different basic salary structures for MTRH and KNH. The Claimant further pleaded that the 1st respondent failed upon request to provide the criteria, methodology and formulae used in carrying out and coming up with the job evaluation report and basic salary and grading structures thereby seriously prejudicing the rights of the Claimant’s members working at MTRH.

3. According to Counsel, there was no justification why a nurse in the same job group and with same academic competence performing the same job should be paid a different salary depending on the facility where that nurse was working. This practice according to the Claimant contravened article 41(1) of the Constitution and section 5(1) (a) (b) of the Employment Act. The job evaluation according to the Claimant did not create equality, fairness, non-discrimination, work of equal value for equal pay and harmony: section as a nurse within the same job group and the same academic qualification. The Claimant further pleaded that released job evaluation if implemented would be detrimental to their members who the 1st respondent has classified as unskilled workers.

4. The respondent on its part pleaded that in fulfilment of its mandate the 1st respondent launched a nationwide Job evaluation process for the entire public sector. The purpose of the exercise was to determine the true worth of public service jobs. The jobs were evaluated and a grading system developed.
5. The benefits of the job evaluation included establishment of a proper basis for recruitment and selection of incoming staff, ensuring proper succession in public sector as well as mapping out training needs of an institution.
6. The respondent further stated that the job evaluation exercise for the Claimant's members was launched and they were invited to the exercise and asked to send their representatives. The exercise was subjected to the same process with all other jobs in the public service. The process involved stakeholder sensitization, training of job analysts identified by the employing agencies including the Claimants members, administration of job descriptions, validation of job description and job evaluation by the consultant using the signed off manuals by employing agencies.
7. Following the receipt of the job evaluation, the Claimant petitioner the 1st respondent and employing agencies with the view that the initial job description may not have appropriately captured their duties and responsibilities. The nursing Cadre jobs were therefore re-evaluated and the process was undertaken with the involvement of employing agencies as well as representations of the Claimant. The results of the re-evaluation were shared with the council of Governors on behalf of County Governments, Ministry of Health on behalf of the national government. The 1st respondent denied releasing two varying reports and further that the reports aimed at downgrading workers as unskilled workers.
8. According to the 1st respondent, the job evaluation could not adversely affect an existing CBA. On the contrary the evaluation enriched the negotiation process in subsequent negotiations.
9. In their final submissions the Claimants submitted that both MTRH and KNH have similar functions and fall under State Corporation Act hence there was no justification for the 1st respondent to issue different basic salary structures in the same Job grades. Furthermore, in comparison, the functions of the CEO MTRH showed he/she had more responsibilities than the CEO KNH as he is the Director of MTRH as well as Principal Health Sciences, Moi University.
10. The Claimant further submitted that the new job evaluation report by the 1st respondent as seen, was aimed to downgrade nurses as semi-skilled workers lower than all other professionals and that stakeholders were not involved or their input considered during the exercise.
11. The 4th and 5th respondent's in their submissions stated that SRC released a report of the job evaluation exercise for public servants in the National Government, which informed the Ministry of Public Service, Youth and Gender Affairs. The SRC undertook and finalized the job evaluation exercise for public servants on 18th September, 2017. Although the Claimant is apprehensive about job evaluation report by SRC that its never involved its members, however, upon release of the job evaluation results, an inter-agency task force was constituted by the Chairperson of the PSC to spearhead the implementation of the job evaluation results for civil service. Its mandate was to develop modalities for implementation of the report with clear road map, develop conversion tables for the salary structures as well as sensitize the service on the implementation strategy.
12. According to Ms Oyugi, the taskforce is still working on finalizing tasks hence the Claimant is ahead of itself as the issues it is raising in the claim are being factored in prior to the implementation of the evaluation report. It was therefore premature to canvass the matter in court.
13. The main complaint by the Claimant in this suit is that the respondents, especially the 1st respondent has carried out a job evaluation exercise which it intends to implement and that such implementation would cause disparity in salaries for nurses working at MTRH and KNH yet the nurses working in both institutions perform similar tasks. The Claimant has further complained that the evaluation exercise has resulted in its members being categorized as semi-skilled workers, a description which the Claimants contend is discriminatory and does not benefit its members who are highly skilled.
14. The respondent while acknowledging that there could be issues with the 1st respondent's job evaluation report has concluded that those issues are under discussion and that the Claimant should have canvassed those issues before the task force dealing with the implementation of the job evaluation report. In effect the respondent contends the suit is premature.
15. On 9th August, 2018, the court in its ruling allowed Mr. John K. Biiy, the National Chairman of the Claimant to be joined as a party to the suit. In that application, Mr. Biiy contended that as a key member of the National Executive Council of the Claimant, he was not involved in the decision to file this claim and that there was no resolution of the National Executive Council to file this claim. According to Mr. Biiy the claim was premature as consultation process between the parties was still going on by the time the suit was filed. This position has not been clearly denied by the Claimant and no evidence has been produced by the Claimant to counter this contention by the respondent and the Claimant's National Chairman.
16. The Court has no intention of deliberately denying a party audience however where a dispute is capable of being resolved without resort to litigation the Court will encourage the parties. Article 159(2) (e) of the Constitution enjoins the Court in exercising judicial authority to be guided by principles among others, alternative forms of dispute resolution. The complaints raised by the Claimant are not frivolous. However, the respondents have indicated their willingness to listen and possibly accommodate them in implementing the report of the job evaluation exercise. It would therefore not be appropriate to throw a fiat of a judicial determination over a matter the parties can negotiate and resolve. If anything, the essence of the Claimants business is negotiations for better terms of its members.
17. In conclusion the Court will disallow the claim as premature and order the same dismissed but with no order as to costs.

18. It is so ordered.

Dated at Nairobi this 20th day of September, 2019

Abuodha Jorum Nelson

Judge

Delivered this 20th day of September, 2019

Abuodha Jorum Nelson

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge