



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**

**ELRC CAUSE NO. 29 OF 2019**

***(Before Hon. Justice Mathews N. Nduma)***

**KENYA NATIONAL UNION OF NURSES.....APPLICANT/CLAIMANT**

**VERSUS**

**NYAMIRA COUNTY PUBLIC SERVICE BOARD..... RESPONDENT**

**RULING**

1. The respondent raised preliminary objection to the suit to wit that the suit is *resjudicata* and it be dismissed in that in Kisumu petition Number 54 of 2018, a return to work formula was filed between the parties herein and all issues arising therefrom should have been raised in the said cause.
2. The objection is opposed in that the matter in petition number 54 are not between the same parties and this suit is not litigated under the same title.
3. Petition number 54 of 2018 was filed by one Elija Samora Nyamoi against Kenya Union of Clinical Officers, Kenya National Union of Nurses and Kenya Medical Practitioners Pharmacist, and Dentists Union with County Government of Nyamira as interested party.
4. Petitioner sought orders that the strike called vide notices dated 18<sup>th</sup> June 2018, 19<sup>th</sup> June 2018 and 26<sup>th</sup> June 2018 be declared illegal and unlawful and it be declared the interested party is not entitled to pay the respondents any monies during the strike period. That the members of the respondent be compelled to resume duty.
5. The present suit is filed by Kenya National Union of Nurses against Nyamira County Public Service Board.
6. The claimant prays for an order directing the respondent to pay all unpaid salaries for the months of July and August 2018 to the nurses employed by the Nyamira County Public Service Board and that the court directs the respondent to implement and respect the Return to Work Agreement signed on 23<sup>rd</sup> August 2018 between the claimant union and the respondent.

**Determination**

7. The court is satisfied that in the return to work formula item 2 thereof, it was agreed that the County Government of Nyamira pay delayed salaries in August 2018 payroll.
8. The Agreement was between Kenya National Union of Nurses, the claimant in the present suit and the County Government of Nyamira, the respondent in the current suit. Indeed, in the demand letter by the Secretary General of the Union Mr. Seth Panyako dated 27<sup>th</sup> February 2019, the union demands payment of the two months salary in arrears. This appears to be the dispute in the present suit.
9. It does not appear that the Return to Work formula in petition number 54 of 2018 was adopted as an order of the court.
10. The matters raised in this suit were not determined in the said petition and are therefore not *resjudicata*.
11. The preliminary objection lacks merit and is dismissed.

**Ruling Dated, Signed and delivered this 4<sup>th</sup> day of November, 2019**

**Mathews N. Nduma**

**Judge**

**Appearances**

Mr. Ndege for Objector

M/S Jane Wangari for claimant.

Chrispo – Court Clerk