



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT AT KISUMU

CAUSE NUMBER 43 OF 2013

[Formerly Nairobi Industrial Court Cause Number 251 of 2012]

BETWEEN

**KENYA UNION OF DOMESTIC, HOTELS,
EDUCATIONAL INSTITUTIONS, HOSPITALS AND
ALLIED WORKERS [KUDHEIHA].....CLAIMANT**

VERSUS

**1. MT. ELGON HOSPITAL
2. NATHANIEL TUM
3. TRANS NZOIA COUNTY GOVERNMENT
4. CABINET SECRETARY, MINISTRY OF MEDICAL SERVICES
5. THE HON. ATTORNEY-GENERAL.....RESPONDENTS**

JUDGMENT

1. This Claim was filed way back on 20th February 2012 at the Industrial Court in Nairobi. It was transferred to the Court in Kisumu in the year 2013 and given the current registration.

2. The issue in dispute is stated in the Statement of Claim, to be ‘refusal by Management to pay terminal benefits to 53 Employees.’ The 53 Employees [Grievants] are:-

1. Janerose N. Mulongo
2. Ann Wanjiru
3. Mary Nalianya
4. Salome Shiton
5. Everlyn Wawire
6. Alice Mbaisi
7. Celestine M. Mutua
8. Agnes Nalianya
9. Irene Orifa

10. Edina Ngosesei
11. Cecelia Cherop
12. Veronica Jelal
13. Lilian Osala
14. Everlyn Lishundu
15. Jackline Mutike
16. Susan Jerotich
17. Judith Ndegwa
18. Catherine Masinde
19. Margaret Jadema
20. Nolega Midecha
21. Milcah Tiony
22. Henrieta Ingoto
23. Lucy Waithera
24. Lillian Tuwi
25. Lucy Kiberengi
26. Samwel Misiko
27. Titus Akhoya
28. Caren Jepkosgei
29. Webo Soita
30. Moses Kiprof
31. Ann Owaga
32. Ben Kibet
33. Kenneth Karani
34. Jane Chepchirchir
35. Elijah Guga
36. Jairus Rakiro
37. Josphat Achenda
38. Caleb Samoyo
39. Samuel Barasa
40. David Chepkwony
41. Jamin Sandachi

42. Simon Katili
43. Godwill Mumelo
44. Charles Koech
45. Abubakas Nyongesa
46. Nichlas Otungs
47. Peter Otieno
48. Wilfred Omusebe
49. Peter Chemiati
50. Richard Kiptoo
51. Jackson Fuehaka
52. Eunice Mudiri
53. Simon Wanyonyi

3. The Claimant states that the 1st Respondent was in the beginning a private hospital. The hospital sent the Grievants on leave without pay. The decision was based on the hospital's inability to meet the Grievants' monthly salaries. The Grievants were to stay out until further notice.

4. On 2nd December 2010, the Claimant Union received a letter from the Ministry of Medical Services, informing the Claimant Union that the hospital had been taken over by the Ministry.

5. The Claimant sought meeting with the hospital's Board of Trustees, to press for settlement of Grievants' terminal dues. The Board did not agree to meet the Claimant Union. The dispute was referred to the Ministry of Labour. A Conciliator was appointed and scheduled a conciliation meeting. The hospital ignored conciliation. On 28th October 2011, the Conciliator issued certificate under Section 69 of the Labour Relations Act 2007, confirming the process had failed to yield settlement. Parties were placed at liberty to escalate the dispute to Court. The Cause was therefore filed at the Court in Nairobi in 2012.

6. Nathaniel Tum is joined to the Claim, in his capacity as hospital's Board of Trustees Chairman, at the time the dispute arose.

7. The County Government of Trans Nzoia is sued as the current owner of the hospital. The County Government filed a Statement of Response on 29th April 2015. Its position is that the hospital was initially a private institution. It was taken over by the National Government in 2010. The County Government denies any liability to the Grievants, and proposes that the Claim is dismissed. Alternatively liability to the Grievants, should be apportioned to the 1st Respondent, and its Board of Trustees.

8. The Parties reverted to the County Labour Office for conciliation, and attended conciliation meetings on 3 consecutive days - 28th, 29th, and 30th May 2018. The meeting was attended by: KUDHEIHA officials, Doreen Nyasio, Wilfred Olando and Mary Wangila; Ministry of Health Officers from the Head Office at Nairobi John Gichuru, Lucy Ogoye, and Luka Kaburu; and Trans Nzoia County Government Representatives Prof. Sifuna and Emelda Agoi. Nathaniel Tum sent his written submissions to the Conciliator.

9. All Parties were given adequate opportunity to state their respective positions. They did so in detail. The Conciliator reached the following findings:-

- The hospital was founded in 1930s by Colonials who were resident of then Trans Nzoia District.
- The hospital was taken over by the National Government on 29th September 2010, and handed over, to then Ministry of Medical Services.
- The Board of Trustees had no known dispute with the Union or the Employees.
- Nathaniel Tum had no capacity to terminate services of Employees.
- The hospital is still in operation.

- The Ministry could not ask Nathaniel Tum to terminate Employees' services as he was no longer in control of the hospital.
- The Permanent Secretary Ministry of Medical Services wrote to Nathaniel Tum on 29th November 2010, advising he terminates Employees' contracts and pays to them terminal benefits in accordance with the CBA in place between the Claimant and the hospital.
- The Ministry of Medical Services runs the hospital and has obligation to pay terminal benefits.

10. The Conciliator recommended:

- The National Government caused termination of Grievants' contracts and was therefore to pay to them, terminal benefits.
- The National Government pays terminal benefits to the Grievants as computed by the Union at Kshs. 4,655,488.
- The County Government of Trans Nzoia ensures Employees who were on permanent terms before the hospital was placed under the County Government, are confirmed as permanent and pensionable.

11. The report was signed by the Conciliator on 26th June 2018.

The Court Finds:-

12. The Parties have not filed anything in Court, contesting the findings and recommendations of the Conciliator. The Claimant Union attended Court today- 7th November 2018, and confirmed the Claimant accepts the findings and recommendations of the Conciliator. The other Parties were notified the matter would be heard by the undersigned Judge during Court's 2 service weeks, at Kisumu. They did not attend Court. There is nothing on record from any of the Parties, disputing the findings and recommendations of the Conciliator.

13. The Court has carefully examined the proceedings before the Conciliator, and the position taken by each Party. The Parties' Pleadings and Documents on record, have been carefully taken into account, and weighed against the findings and recommendations of the Conciliator. It is not likely, that a process of judicial hearing would result in findings, radically at variance with those of the Conciliator. The dispute has been pending since the year 2012, and must be brought to an end. The Court is satisfied that the Conciliator made the correct findings and arrived at an outcome based on the facts.

IT IS ORDERED:-

a) The findings and recommendations of the Conciliator contained in the Report dated 26th June 2018, filed in Court on 2nd July 2018, are adopted as the Judgment of the Court.

b) The National Government [Ministry of Health] shall pay Grievants' terminal benefits, as computed by the Claimant Union at Kshs. 4,655,488.

c) County Government of Trans Nzoia to ensure Employees of Mt. Elgon Hospital, are confirmed on permanent and pensionable terms.

d) No order of the costs.

Dated and delivered at Kisumu this 7th day of November, 2018

James Rika

Judge