



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
COLLECTIVE BARGAINING AGREEMENT

CAUSE NO. 1 OF 2016

**IN THE MATTER OF COLLECTIVE BARGAINING AGREEMENT BETWEEN MOI
TEACHING AND REFERRAL HOSPITAL BOARD**

AND

THE KENYA NATIONAL UNION OF NURSES

RULING

[1] This ruling was meant to be delivered on 16 September 2016 but had to be postponed because the Court did not sit on that day due to other official engagements. The Court regrets any inconvenience caused to the parties.

[2] The Moi Teaching and Referral Hospital Board and the Kenya National Union of Nurses signed a Collective Bargaining Agreement on 3 February 2015. The collective bargaining agreement was stated in clause 35 to be effective from 1 September 2016.

[3] On 28 July 2016, the collective bargaining agreement was lodged in court for registration and in this respect, it was placed before Court on 29 July 2016.

[4] In attendance were Mr. Seth Panyako, Secretary General of the Kenya National Union of Nurses (Union), Mr. Masese, Senior Legal Officer, Federation of Kenya Employers on behalf of the Moi Teaching and Referral Hospital Board (employer) and Ms. Wafula representing the Salaries and Remuneration Commission (it is not clear how the Salaries and Remuneration Commission knew that the collective bargaining agreement would be placed before Court on that day).

[5] The representatives of the Union and Employer informed the Court that the file was before Court for registration of the collective bargaining agreement.

[6] Ms. Wafula, talking from the bar informed the Court that the Salaries and Remuneration Commission had advised the employer that before having the collective bargaining agreement concluded, it was necessary to get the confirmation of the National Treasury that funds to meet the financial aspects of the agreement would be made available, but the said confirmation had not been given.

[7] According to Ms. Wafula, the registration of the collective bargaining agreement would therefore be an exercise in futility.

[8] In a brief response, Mr. Panyako informed the Court that he had been informed that the Treasury had (agreed) and/or committed funds towards the implementation of the collective bargaining agreement

effective September 2016, but subject to prior registration of the collective bargaining agreement.

[9] Because of the concerns raised by the Salaries and Remuneration Commission, the Court directed the employer to demonstrate whether the Treasury had given a commitment that funds would be made available for the implementation of the collective bargaining agreement.

[10] As part of complying with the Court directive, the employer filed on 15 August 2016, an affidavit sworn by its Chief Executive Officer.

[11] In paragraphs 4, 5, 6 and 7 of the affidavit, the Chief Executive Officer deposed

(4) THAT the Hospital has steadfastly requested for funds to support implementation of the CBA from the National Treasury, through the Principal Secretary Ministry of Health, and a response is yet to be received.

(5) That furthermore, funds for implementation of the CBA were sought through the proposed budget for 2015/2016 and 2016/2017. No funds were allocated to the Hospital for this.

(6) That input from the Salaries and Remuneration Commission (SRC) was sought and obtained, and SRC allowed the parties to sign the CBA. However, basic salary, house allowance, uniform allowance and responsibility allowance which have financial implications be kept in abeyance.

(7) That the Parties negotiated and agreed on 1st September as the effective date for the four (4) year CBA. Furthermore, upon registration, the Hospital will present the CBA to the National Treasury for funding together with previous funding requests, through the Ministry of Health.

[12] From the deposition by the employer's Chief Executive Officer, there is no doubt that a pre-conditional advice by the Salaries and Remuneration Commission before signing or committing to the collective bargaining agreement (items with a financial implication) had been ignored by the employer when signing the collective bargaining agreement.

[13] And with that observation, it is in good order to recall that this Court in a dispute between these same parties, Nakuru CBA No. 1 of 2015, *Kenya National Union of Nurses v Moi Teaching & Referral Hospital & 2 Interested Parties*, delivered on 18 December 2015, held that it was bound by the decision of the Court of Appeal in *Teachers Service Commission v Kenya Union of Teachers (KNUT) & Ors* (2015) eKLR that the advice of the Salaries and Remuneration Commission on remuneration of public officers was binding.

[14] In conclusion in that case, and in fashioning a remedy, the Court rendered itself thus

The order which commends itself here is to direct the parties to go back to the negotiating table and reach a mutually agreed deal on the outstanding issues after putting into consideration the 1st Interested parties advise.

[15] It seems that the parties have not secured the commitment from Treasury or complied with the advice by the Salaries and Remuneration Commission.

[16] Securing a commitment from the National Treasury is not merely an issue of course because at least from a statutory perspective it has anchor in section 15(5) of the Employment and Labour Relations Court Act, 2011.

[17] Without compliance with that statutory requirement, the registration of the collective bargaining agreement would not be possible.

[18] Before concluding and with a heavy heart, I wish to observe that the relationship between employers and unions who have entered into a recognition agreement ought to be one of utmost good faith, and

where one partner becomes recalcitrant, the other partner, subject to fulfilment of the statutory processes may use its economic or social muscle to induce an agreement.

[19] The Court also takes judicial notice of the fact that the health sector in this country has been turmoil since devolution and unless the respective parties realise that it is the tax paying citizenry which is suffering acutely, all of us will be the losers.

[20] The Court is therefore constrained to decline to register the collective bargaining agreement until a commitment is received from the National Treasury.

[21] Each party to bear its own costs.

Delivered, dated and signed in Nakuru on this 20th day of September 2016.

Radido Stephen

Judge

Appearances

For Union Mr. Seth Panyako, Secretary General, Kenya National Union of Nurses

For Employer Mr. Masese, Senior Legal Officer, Federation of Kenya Employers

Salaries and Remuneration Commission Ms. Wafula

Court Assistant Mwangi S.