



**County Government of Kiambu v Kenya Medical Practitioners and Dentists Union & another (Petition E008 of 2024) [2024] KEHC 3630 (KLR) (16 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3630 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
PETITION E008 OF 2024  
DO CHEPKWONY, J  
APRIL 16, 2024**

**BETWEEN**

**THE COUNTY GOVERNMENT OF KIAMBU ..... APPLICANT**

**AND**

**KENYA MEDICAL PRACTITIONERS AND DENTISTS UNION .... 1<sup>ST</sup>  
RESPONDENT**

**KENYA MEDICAL PRACTITIONERS AND DENTISTS UNION (KIAMBU  
CHAPTER) ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This matter came up for mention on 15<sup>th</sup> April, 2024 for parties to take directions in respect of the Notice of Motion application dated 5<sup>th</sup> April, 2023 in which the Applicant, the County Government of Kiambu is seeking for orders that:-
  - a. This application be certified as extremely urgent and service be dispensed with in the first instant.
  - b. Pending the hearing and determination of this application interpartes, this Honourable Court be pleased to direct the Respondents' members employed by the Applicant to resume work immediately.
  - c. Pending the hearing and determination of this application and the Petition filed herewith, this Honourable Court be pleased to direct the Respondents' members employed by the Applicant to resume work immediately.
  - d. Pending the hearing and determination of the Petition filed herewith, the Applicant be allowed by this Court to advertise for the positions of the Respondents' members employed by the Applicant who have absconded duty.



- e. Pending the hearing and determination of the Petition filed herewith, the Honourable Court be pleased to issue an order stopping the Respondents' members from participating in the ongoing nationwide strike or any such other industrial action.
  - f. The costs of this application be provided for.
2. Counsel for the Applicant, Mr. Ligunya indicated that they had served the Respondents with the Petition together with the said application, accompanying documents and directions on 9<sup>th</sup> April, 2024 and had filed an Affidavit of Service dated 12<sup>th</sup> April, 2024 to confirm this. Counsel indicated to court that despite this service, they had not received any response. He went on to state they were seeking to be granted prayer No.(c) of the application which is seeking that:-

“Pending the hearing and determination of this application and the Petition filed herewith, this Honourable Court be pleased to direct the Respondents' members employed by the Applicant to resume work immediately”.

3. The reason for this prayer is because the Petitioner is the employer of the Respondents' members (herein referred to as 'Doctors') and wishes to have them resume work while negotiations are on-going because of the desperate situation on the ground where they are compelled to pay them and yet they are not serving the patients who require their services at various health centres and it cannot replace them.
4. I have carefully read through the application, grounds upon which the prayers sought are premised on its face and Supporting Affidavit sworn by Waithira Waiyaki, the County Attorney, of the County Government of Kiambu together with all the annexures. I find the issues raised in the Petition being related to employer and employee relations which fall in the ambit of the Employment and Labour Relations court as established under Article 162(2) of the *Constitution*, which court has the original and appellate jurisdiction to hear and determine all disputes relating to employment and labour relations, which include granting conservatory, declaratory, injunctive, compelling and compensation orders, as between employers and employees.
5. Therefore, this court lacks jurisdiction to hear and determine the application herein which is between the County Government of Kiambu as an employer of the doctors, who are members of the Respondent and grant the orders being sought therein. Jurisdiction is key as it goes to the heart of a case/dispute. See the case of *The Owners of Motor Vessel Lilian S' - v- Caltez Oil Kenya Ltd* [1989]eKLR), where it was held that:-

“Jurisdiction is everything. Without it, a Court has no power to make one step. Where a Court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence and a Court of law downs its tools in respect of the matter before it, the moment it holds the opinion that it is without jurisdiction”.

In the circumstances, this Court finding it has no jurisdiction to hear and determine this matter should down its tools at this interim stage.

6. However, it is worth-noting that there is in existence a Consolidated Petition No.E032 and E033 of 2024 pending before the Employment and Labour Relations' Court sitting at Nairobi which is being litigated on behalf of all Doctors in the Country as indicated at Paragraph 20 of the Applicant's Supporting Affidavit.
7. There are also orders of the Employment and Labour Relations Court at Nairobi (See attached annexure Marked NW – 3) issued on 3<sup>rd</sup> April, 2023 that:-



- a. The two applications for contempt by the KNH and KMPPDU respectively are stayed to pave way for the conclusion of the whole-of-nation approach meetings and the conciliation meetings. Parties encouraged to compromise in that regard.
  - b. Whole-nation approach meetings and conciliation meetings to expeditiously proceed and conclude within 14 days, but not later than 17<sup>th</sup> April, 2024. Mention date set for 17<sup>th</sup> April, 2024 to record compromise or for further orders.
  - c. Orders issued on 15<sup>th</sup> March, 2024 and extended on 20<sup>th</sup> March, 2024 are hereby further extended until mention date or until further orders are issued.
  - d. Strike notice issued by KMPPDU remains suspended on two conditions:-
    - i. The whole of nation approach meetings and conciliation meetings be concluded within 14 days, and the parties to conclude the file in court the minimum safety services MOU within 14 days.
    - ii. Pending the written date (17<sup>th</sup> April, 2024). Council of Governors (COG) to compile and file in court a report on the gaps within public health facilities with a view of informing the ongoing negotiations i.e, the current numbers and cadres within our health facilities.
  - e. The Parties at liberty to file reports of the ongoing negotiations and conciliations proceedings.
  - f. Doctors ordered to continue working pending the mention date set; in default of which the court will move to determine whether the intended industrial action is lawfully protected, and what indeed amounts to minimum safety services.
8. A reading of the said clearly shows that the same involve the Kenya Medical Practitioners and Dentists Union and the Council of Governors (COG) which encompass all Doctors who are members of the said Union and the County Governments as Members of the Council of Governors, the parties herein not excluded.
9. In view of the above cited orders, even if this Court were to be seized of the requisite jurisdiction to hear and determine the Petition herein, it would not be prudent for it to grant any orders as sought herein as the court which issued those is a court of concurrent and competent jurisdiction as this court. This is so as to avoid creating confusion and or conflict in the ensuing matter that has affected all the Counties and the Nation at large.
10. Having so observed, I have taken into account the related issues that have been raised in this matter and the ones that may be before the Employment and Labour Relations Court and invoke the overriding objective as provided for under Section 3A of the Civil Procedure Act. I proceed to direct that this matter be transferred to the Employment and Labour Relations Court in Nairobi for placement before the Presiding Judge of the said court for mention alongside the consolidated Petition No.E032 and E033 of 2024 on 17th April, 2024.

It is so ordered.

**RULING DELIVERED, DATED AND SIGNED AT KIAMBU THIS 16<sup>TH</sup> DAY OF APRIL, 2024.**

**D. O. CHEPKWONY**

**JUDGE**

In the presence of:



Mr. Ligunya counsel for Applicant  
No appearance for and by Respondent  
Court Assistant - Martin

