



**County Government of Kisii v Kenya National Union of Nurses & Midwives  
(Cause E019 of 2025) [2025] KEELRC 2438 (KLR) (18 September 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2438 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISII  
CAUSE E019 OF 2025  
NZIOKI WA MAKAU, J  
SEPTEMBER 18, 2025**

**BETWEEN  
COUNTY GOVERNMENT OF KISII ..... CLAIMANT  
AND  
KENYA NATIONAL UNION OF NURSES & MIDWIVES ..... RESPONDENT**

**RULING**

1. Before the Court is the Claimant/Applicant's notice of motion dated 20<sup>th</sup> August 2025. Through it, the Claimant/Applicant seeks the following orders:
  - i. Spent
  - ii. The Honourable Court be pleased to order the Respondent and/or its officials, agents or servants, assigns and/or anybody else claiming under it to immediately call off the ongoing strike, picketing or industrial action by the members of the Respondent which started on 8<sup>th</sup> August, 2025 pending the hearing and determination of this Application.
  - iii. The Honourable Court be pleased to order the Respondent and/or their officials, agents or servants, assigns and/or anybody else claiming under them to immediately call off the ongoing strike, picketing or industrial action by the members of the Respondent which started 8<sup>th</sup> August, 2025 pending the hearing and determination of the main suit.
  - iv. The Honourable Court be pleased to order the members of Respondent's Union to immediately report back to work pending the hearing and determination of this Application.
  - v. The Honourable Court be pleased to order the members of Respondent's Union to immediately report back to work pending the hearing and determination of the main suit.
  - vi. This Honourable Court do hereby issue a temporary order prohibiting the members of the Respondent Union, its employees, agents, servants, assigns and/or anybody else claiming



under them and all health workers employed by the Claimant from proceeding, participating, inciting or taking part in any way in a strike, go slow or any industrial action or engaging or taking part in any conduct, activity or meetings in contemplation of or towards preparation for a strike in the County Government of Kisii pending the hearing and determination of this application.

- vii. This Honourable Court do hereby issue a temporary order prohibiting members of the Respondent Union, its employees, agents, servants, assigns and/or anybody else claiming under them and all health workers employed by the Claimant from proceeding, participating, inciting or taking part in any way in a strike, go slow or any industrial action or engaging or taking part in any conduct, activity or meetings in contemplation of or towards preparation for a strike in the County Government of Kisii pending the hearing and determination of the main suit.
  - viii. The Honourable Court be pleased to issue an injunction restraining members of the Respondent Union, its employees, agents, servants, assigns and/or anybody else claiming under them from interfering with the smooth running of health services at the County Government of Kisii pending the hearing and determination of this Application.
  - ix. The Honourable Court be pleased to issue an injunction restraining members of the Respondent Union, its employees, agents, servants, assigns and/or anybody else claiming under them from interfering with the smooth running of health services at the County Government of Kisii pending the hearing and determination of the suit.
  - x. That Officer Commanding Station (OCS) Kisii Police Station be and is hereby directed to assist in the enforcement of these Orders.
  - xi. The cost of this application be awarded to the Applicant.
2. The application is supported by the Supporting Affidavit sworn by Dr. Douglas Oimike Mariita as well as grounds on the face of the motion. In brief, the indication was that the obtaining strike is not only illegal but also inimical to public policy and a breach of *the Constitution* of Kenya and the law. And, that the members of the Respondent Union, being employees in the health sector, viz., nurses, are essential service providers pursuant to section 81 of the *Labour Relations Act* as read together with the Fourth Schedule thereto, hence the ongoing strike is prohibited as the said strike may lead to deaths and unprecedented health complications.
  3. The Respondent is opposed to the motion and in addition to an application it preferred against the Claimant, which application is pending before the Court, filed a Replying affidavit sworn by Mr. Kibet Kirui an Industrial Relations Officer of the Respondent. In the Replying Affidavit purportedly sworn on 12<sup>th</sup> August 2025 he avers that the Application is misconceived, ill-advised, premature and an abuse of the court process. He asserts that the Application is mala fide crafted to circumvent lawful industrial relations mechanisms and to improperly mislead this Honourable Court into endorsing unjust and unlawful conduct. He depones that Application is deliberately framed to mislead this Honourable Court by alleging that the strike was spent, whereas it had in fact been duly ratified under section 76(6) of the *Labour Relations Act* to lawfully commence on 8<sup>th</sup> August 2025 after full compliance with sections 62, 76, and 81 of the *Labour Relations Act*, thereby amounting to misrepresentation of material facts and a gross abuse of the court process. He deponed that the Application is further tainted by concealment and non-disclosure of material facts, deliberately designed to mislead this Honourable Court that no conciliation had been undertaken; such concealment of material facts constitutes bad faith and a gross abuse of the court process. He deponed that the Application is founded on misrepresentation, concealment, and bad faith, offends the clean hands principle, and



under section 77(2) of the [Labour Relations Act](#) incapable of benefiting from any equitable relief before this Honourable Court. He further deponed that the grounds of the Application as rooted in the Notice of Motion and the Supporting Affidavit are mala fides, calculated not to seek justice but to punish the Respondent's members for exercising their constitutionally guaranteed rights. He asserts that the industrial action complained of was a protected strike undertaken within the framework of Industrial Relations.

4. He deponed that the Respondent duly served upon the Applicant/Claimant a nationwide strike notice dated 29<sup>th</sup> May 2025, which contained specific demands touching on the County Government of Kisii, and which notice was duly received in accordance with the provisions of the [Labour Relations Act](#). He deponed that prior to the strike, the Union duly served the Ministry of Labour with the strike notice, and the Ministry appointed a conciliator as required under section 62 of the [Labour Relations Act](#), 2007.
5. He deponed that subsequent to the issuance of the strike notice and upon the appointment of a conciliator, the National Advisory Council, by its resolution dated 30<sup>th</sup> June 2025, ratified the extension of the strike notice for a further period of thirty (30) days pursuant to section 76(6) of the [Labour Relations Act](#). The resolution explicitly provided that, should the dispute remain unresolved, the nurses would commence the strike on 8<sup>th</sup> August 2025.
6. The Respondent asserts the dispute remained unresolved after conciliation efforts by the Minister and that the strike called therefore was in accordance with the law.

### **Submissions**

7. Only the Applicant had filed submissions in line with Rule 49 of the Employment and Labour Relations Court (Procedure) Rules 2024. In the said submissions, the Claimant/Applicant submits that the principles for grant of interlocutory injunction are well enunciated in the locus classicus case of *Giella v Cassman Brown* [1973] EA 358, which principles are prima facie case; irreparable injury; and that the balance of convenience favours granting the injunction.
8. It was submitted that the members of the Respondent went on strike on 8<sup>th</sup> August 2025 and that pursuant to section 81(1) of the [Labour Relations Act](#), "essential services" means a service the interruption of which would probably endanger the life of a person or health of the population or any part of the population. That further, pursuant to the Fourth Schedule to the [Labour Relations Act](#), hospital services are listed as essential services thereunder. Accordingly, section 81(3) of the [Labour Relations Act](#) provides in mandatory terms that there shall be no strike or lock-out in an essential service. It is the Claimant's submission that the ensuing strike was called without a notice. On the first issue per the case of *Giella v Cassman Brown*, the Claimant asserts on face of the Memorandum of Claim before the Honourable Court, the Claimant has established a prima facie case that requires the Court to deliver itself thereon, to wit, the legality of the obtaining strike by Members of the Respondent Union vis-à-vis section 81 of the [Labour Relations Act](#) and the Fourth Schedule thereto, among others.
9. On the question of irreparable injury, it is submitted that whereas section 81(1) of the [Labour Relations Act](#) defines essential services as a service the interruption of which would probably endanger the life of a person or health of the population or any part of the population, section 81(3) prohibits strikes or lock-out in an essential service. This is a testament to the sacrosanct nature of life and how irreparable it is once damage is suffered. Lack of health services, which are essential ipso facto, occasioned by the ongoing strike is likely to lead to deaths and unprecedented health complications. Death and health complications, which could be averted had the members of the Respondent Union adhered to section 81(3) of the [Labour Relations Act](#), cannot be adequately compensated. No one can sufficiently



compensate for a lost life or complications arising from lack of health services. It was submitted that it goes without saying that the members of the public are bearing the brunt of the obtaining illegal strike hence the need for the Honourable Court's intervention by allowing the Application herein. The Claimant submits the strike has paralyzed the entire health services in the public sector throughout Kisii County. It was submitted that the Supporting Affidavit sworn by Dr. Douglas Oimeke Mariita on 20<sup>th</sup> August 2025 attesting to the severity of the ongoing illegal strike and the magnitude of injury it is inflicting to the public. The Claimant cites the case of Seth Panyako & 5 others v Attorney General & 2 others [2013] eKLR as well as that of County Government of Kisii v Kenya Medical Practitioners Pharmacists & Dentists Union (KMPDU) & another (Cause E016 of 2024) [2024] KEELRC 561 (KLR) (14 March 2024) (Ruling) which both held that it was illegal to conduct a strike in essential services. The Claimant thus urged the grant of the prayers in its notice of motion.

### Oral arguments

10. On 16<sup>th</sup> September 2025, the parties urged and opposed the motion respectively. Mr. Jumba urged the grant of the order sought asserting that the Claimant had laid basis for their grant. In opposition, Mr. Kirui for the Respondent urged the discharge of the orders granted by the Court stopping the industrial action. He asserted there was demonstrable bad faith on the part of the Claimant/Applicant who had deliberately refused to engage in negotiations to ensure the compliance with the SRC directive issued. He argued that the Respondent had adhered to the minimum requirements on service provision in essential services. He cited the decision of the 3 judge bench of this Court being Kenyatta National Hospital v Kenya Medical Practitioners Pharmacists and Dentists Union (KMPDU) & Salaries & Remuneration Commissions & 2 others Pet. E032 of 2024

### Finding

11. I have considered the rival position and come to this determination. Regarding service provision, no evidence was laid before the Court in terms of the number, position and frequency of attendance at the health facilities as required by the law. No minimum service agreement duly registered or even one that is unregistered was availed. I therefore find the contention on minimum levels of service to be mere allegations. The primary issue that lends itself for determination before me is this – whether the strike called by the Respondent is protected within the meaning of the Labour Relations Act and as a corollary whether there is basis to grant any of the reliefs sought by the Claimant. The Labour Relations Act makes provision under sections 76 and 77 for calling of strikes or lockouts. Under section 76 which the Respondent called in aid, it is provided as follows:

76. A person may participate in a strike or lockout if—
  - (a) the trade dispute that forms the subject of the strike or lock-out concerns terms and conditions of employment or the recognition of a trade union;
  - (b) the trade dispute is unresolved after conciliation-
    - (i) under this Act; or
    - (ii) as specified in a registered collective agreement that provides for the private conciliation of disputes; and
  - (c) seven days written notice of the strike or lockout has been given to the other parties and to the Minister by the authorised representative of –
    - (i) the trade union, in the case of a strike;



- (ii) the employer, group of employers or employers' organisation, in the case of a lock-out.

12. As can be seen above, under section 76(c) a seven days-notice must be issued in order for the strike notice to fall within the ambit of the law and result in a protected/legal strike. Did the notice of 29<sup>th</sup> May 2025 morph into a notice in terms of section 76(c) of the *Labour Relations Act* by dint of the resolution of the organs of the Respondent as contained in its letter of 30<sup>th</sup> June 2025? I hazard to say no. Why? The law does not contemplate the extension of a strike notice issued in terms of section 76(c) of the *Labour Relations Act*. The Respondent in its letter of 30<sup>th</sup> June 2025 cites section 76(6)(b) as basis for the extension of strike notice. This section does not exist in the statute. It is my finding that nothing in the *Labour Relations Act* contemplates the extension of lock out or strike notice as the Respondent portended to do. The correct thing would be to issue a fresh strike notice granted the initial notice was issued in May 2025. It cannot be relied on for a strike held in August of 2025 despite the assertions of the Respondent. It was improper of the Union to purport to extend the strike notice issued prior to conciliation efforts by the Ministry. A strike notice by its nature communicates a union's demands and is meant to allow the employer make informed decisions as whether to accede to those demands or not.
13. Having said the foregoing, the order that commends itself to the Court to make in respect of the industrial action called by the Respondent commencing 8<sup>th</sup> August 2025 is to halt the strike as it was commenced without legal foundation. The strike is unprotected in terms of sections 78(1)(f) and 81 of the *Labour Relations Act*. The strike notice did not comply with section 76(c) of the Act. The strike by the Respondent's members called on 8<sup>th</sup> August 2025 is unprotected and therefore illegal. In the final result it is hereby ordered as follows:
  - i. An order do and is hereby issued directing the Respondent and/or their officials, agents or servants, assigns and/or anybody else claiming under them to immediately call off the ongoing strike, picketing or industrial action by the members of the Respondent which started on 8<sup>th</sup> August 2025 pending the hearing and determination of the main suit.
  - ii. An order do and is hereby issued directing the members of Respondent's Union to immediately report back to work pending the hearing and determination of the main suit.
14. The parties will each bear their own costs for the motion. The case will be listed for directions as to disposal/hearing of the suit on 15<sup>th</sup> October 2025 during the court circuit in Kisii. For avoidance of doubt, the orders herein do not bar the parties from engaging in negotiations or conciliation to resolve the simmering dispute in terms of section 77(3) of the *Labour Relations Act*.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 18<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**NZIOKI WA MAKAU, MCIArb.**

**JUDGE**

