



**County Government of Mombasa v Kenya National Union of Nurses (Cause E001 of 2025) [2025] KEELRC 2960 (KLR) (30 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2960 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE E001 OF 2025  
M MBARÚ, J  
OCTOBER 30, 2025**

**BETWEEN  
COUNTY GOVERNMENT OF MOMBASA ..... CLAIMANT  
AND  
KENYA NATIONAL UNION OF NURSES ..... RESPONDENT**

**JUDGMENT**

Issue in dispute – an illegal, irregular and unprotected strike action called by the respondent.

**Claim**

1. The claimant is seeking the following Orders:
  1. A permanent injunction restraining the respondent and its members from carrying on with the strike action vide their strike notice issued on 16 December 2024 in terms of the 21-day notice commencing on 13 January 2025.
  2. A declaration that the strike notice dated 16 December 2024 is irregular, illegal, unlawful, prohibited and unprotected.
  3. The respondent to bear the costs of the suit.
  4. Any other relief or further orders that this court may deem just in furtherance of sound labour relations and economic development.

**Counterclaim**

2. In the counterclaim, the respondent is seeking the following:
  1. An order be issued directing the claimant to effect the promotion of 240 nurses who are members of the union as per the attached list.



2. An order directing the claimant to pay promotion arrears from the date the members of the union qualified.
  3. A declaration that the SRC-approved remuneration structure for county governments should be implemented.
  4. Any other order that the court deems fit to grant to meet the ends of justice.
  5. Costs be provided for.
3. The claimant is a County Government established under *the constitution*. The respondent is a registered trade union under the *Labour Relations Act*.
  4. The respondent issued a 21-day strike notice dated 16 December 2024 to commence on 13 January 2024. In the notice, the respondent raised 9 issues including the employment of nurses on short-term contract, delays in promotion, replacements of those retired, failure to negotiate a collective agreement (CBA), failure to convert UHC nurses for permanent and pensionable, implementation of new salary structure under the SRC circular dated 12 September 2024, implementation of the CBA, resignation and the issue of implementation of 17 tier grading structure.
  5. The claim is that the claimant has taken all the necessary measures to ensure the welfare of the respondent members is protected and if the strike notice is allowed to take effect, all activities at the key medical facilities of the claimant including Coast General Teaching and Referral Hospital, Tudor Hospital, Port Reitz Hospital, Shimo la Tewa G.K. Prison Hospital, Likoni District Hospital together with all the outreach centers and health institutions will be affected. What the respondent seeks to address through the strike notice can be addressed through negotiations rather than impacting the lives of members of the public who are under the service of the claimant. The strike, if allowed to proceed, will result in loss of life and loss of economic and social rights.
  6. The claim is that the claimant has tried several times to reconcile with the respondent and its members, but the strike notice has jeopardised any consultations. The strike notice dated 16 December 2024 is unprotected, whereas the parties have no Recognition Agreement; hence, it is illegal and irregular.
  7. The rights under Article 41(2) of *the Constitution* are limited by Article 24. Further, sections 78 and 81(3) of the LRA provide for circumstances in which such rights may be limited. Before a strike notice can issue, notice must be served upon the Minister under section 62 of the LRA, which the respondent has failed to invoke.
  8. In evidence, the claimant called Fadhil Maamun, the chief executive officer of the Mombasa Public Service Board, who testified that he is aware that the respondent issued a strike notice dated 16 December 2024 to commence on 13 December 2024 [2025]. However, parties have had to hold meetings on 24 December 2024, and the next is scheduled for 9 January 2025. The claim management met on 8 January 2025 to deliberate over the matter, and unless the respondent members are restrained from undertaking the threatened strike, any consultations or negotiations will be difficult.
  9. Some of the issues raised by the respondent are beyond the claimant's control. The issues of failure to convert UHC nurses to permanent and pensionable terms, the alleged failure to implement the new SRC circular of 12 September 2024, the implementation of the national CBA for seconded nurses from the national government to the county and the implementation of the 17-tier grading structure. Some of the issues already addressed by the claimant include promotions, re-designations, and replacements of nurses who have left employment. On 17 July 2024, the claim promoted 106 nurses.



10. Maamun testified that the following promotions for nurses are due in August 2025. This is subject to the availability of funds and vacancies.
11. Common cadre promotions relate to the first job group, are non-competitive, and are subject to the availability of funds. The last promotion in the ordinary cadres was in 2020. In 2024, the claimant addressed the issue and has since issued promotion letters. The issue of promotions is a continuous process, all subject to the availability of funds.
12. The claimant appreciates that promotions are not automatic since funds must be available. The SRC, through a circular dated 12 September 2024, directed County Governments to promote their employees, subject to sufficient funds being available for the purpose. The SRC is binding on condition of funds availability.
13. Maamun testified that the respondent, in the counterclaim, appreciates that most of the issues raised are administrative. As the CEO of the County Public Service Board, he is aware that, as the accounting officer, unless funds are available, the promotions will be challenging to implement.

### **Response and counterclaim**

14. In response, the respondent asserts that it lacks locus standi in light of the mandatory provisions of Article 235 of *the Constitution*, read together with sections 57 and 59 of the County Government Act (CGA), which vest the human resource functions for county employees within the County Public Service Board. The Mombasa County Public Service Board (the Board) is not a party in these proceedings. It is the body responsible for the recruitment, promotion, and discipline of employees. Such denies the claimant standing under section 12 of the *Employment and Labour Relations Court Act*.
15. Following negotiations between the union and the Board, the issue of common cadre promotions and the implementation of SRC's new salary structures, pursuant to the circular dated 12 September 2024, remains unresolved. The common cadre promotions are automatic and should be processed as provided in the scheme of service for nursing personnel and the public service human resource manual, with the effective date of promotion being the date the officers qualify.
16. The last promotions for the common cadre were due in 2023, as part of a 3-year cycle. The respective members should receive the due promotions, plus the arrears due to stagnation.
17. Under Article 41(2) of *the Constitution*, every employee has the right to go on strike. The respondent members resumed work during the notice period, offering minimum service; hence, the strike is protected under section 87 of the LRA. The claimant has refused to engage with the respondent in an out-of-court settlement, leading to the issuance of a strike notice.

### **Counterclaim**

18. In the counterclaim, the respondent argues that its members engaged in a protected strike because no court order declared it unlawful. The claimant has not addressed any of the issues addressed by the respondent. The pending promotions of nurses have been brought to the claimant's attention without any action.
19. Promotions within the common cadre establishment posts are automatic and cover the first two entry job groups once an officer serves a period of three years in the same job group, as per sections 27 and 28 of the Public Service Human Resource Policy Manual and the Scheme of Service for nursing personnel. The effective date for promotions was 2020.



20. The respondent is aware that the claim has not implemented the approved remuneration structure for County Governments, as set out in the SRC circular dated 12 September 2024. The circular went to all Boards, and the claimant's or the Board's refusal to comply is not justified.
21. In evidence, the respondent called Emily Jemuge Mursoi, branch secretary working at Mlaleo CDF Health Centre within the claimant facilities. She testified that the branch forwarded a list of 240 nurses for the common cadre establishment dated 28 January 2025, whose last promotions were in July 2020.
22. The respondent's members participated in a protected strike, as there was no court order prohibiting it.
23. At the close of the hearing, both parties filed written submissions, which are analysed in the judgment.

### **Determination**

24. The issues which emerge for determination are whether the claim has proper standing in this case, whether the respondent and its members should be restrained from proceeding with the strike notice dated 16 December 2024, and whether the counterclaim has merit.
25. The court addressed the claimant's standing in this case in its ruling delivered on 1 July 2025.
26. The issues of the strike notice dated 16 December 2024 and the counterclaim are intertwined. Both will be analyzed together for clarity.
27. The claimant asserts that the notice dated 16 December 2024 is unlawful and failed to meet the threshold of Article 41(2) of *the Constitution*, read together with Articles 24 and 81 of the LRA and Section 78 of the LRA. The respondent asserts that, under Article 41(2) of *the Constitution*, the employee has the right to strike. The respondent argues that its members went on strike because no court order declared it unprotected.
28. The right to strike is secured under *the constitution*, but it must be implemented within the permissible limitations. Given that the respondent has done so, there was no court order stopping the strike; such an order would amount to the law of the jungle—literally so.
29. The court in the case of *County Government of Marsabit v Kenya Union of Clinical Officers (KUCO) & another* [2025] KEELRC 814 (KLR) held that the thresholds of a protected strike are:
  - a. The trade dispute forming the subject of the strike concerns terms and conditions of employment or recognition of a trade union.
  - b. The trade dispute was referred to conciliation, but it was not resolved.
  - c. The authorised representative of the trade union issued seven days' written notice to the other party and the Minister.
  - d. In addition, the employer and employee are not engaged in essential services under section 78 (1) (a & f) and 81(3) of the *Labour Relations Act*.
30. Each party on the shop floor must operate within the confines of the law. Engaging in industrial action before a court sanction is unjust and invalid.
31. Under sections 78(1) and (f) and 81(3) of the LRA, the members of the respondent provide essential services, and withdrawal of labour would lead to the collapse of the health sector in the claimant facilities, leading to massive deaths. Both parties have noted that the Conciliation had not been concluded, and there was no Certificate of Unresolved dispute as held in Nairobi Petition No. E174 of



2024, Kenya Medical Practitioners, Pharmacists & Dentists Union v County Government of Kiambu & Another.

32. Indeed, where there are competing rights, the court should interrogate each view and the allowable limitations and rationalize the interests of each party. It is not in dispute that the respondent members work in essential services. Such is a matter defined concerning the lives of the public seeking services at the claimant facilities in Coast General Teaching and Referral Hospital, Tudor Hospital, Port Reitz Hospital, Shimo la Tewa G.K. Prison Hospital, Likoni District Hospital, and other outreach centers.
33. The right to life, as guaranteed in Article 26(1) of *the Constitution* is superior to the right to participate in industrial action as provided under Articles 37 and 41(2)(d). The respondent and its members, being in the category of essential service providers, should be prohibited from taking industrial action, as it has led to loss of life, which is irreversible. Such a limitation is lawful as held in *Joseph Otieno Oruoch v Kenya Medical Practitioners Pharmacists & Dentists Union & another* [2021] KEELRC 1147 (KLR). The limitation of rights is further addressed by the court in *County Government of Kiambu v Kenya Medical Practitioners, Pharmacists and Dentists Union* [2025] KEELRC on the basis that part of the resources used to fund the devolved health function are disbursed from the National Government. If there are delays in the disbursements, if there are challenges concerning affordability or if the employer should address sustainability, such would affect nearly all the 47 Counties.
34. The parties have relied on the SRC circular dated 12 September 2024 to address the claimant's concerns and the counterclaim. It relates to the remuneration and benefits for the County Government employees at the executive level for the third remuneration review cycle 2021/2023 to 2024/2025. The remuneration structure took effect on 1 July 2024, subject to affordability and the financial sustainability of the resultant cost implications. The SRC further gave implementation notice, taking into account that for the circular to apply, a job evaluation was necessary, and the salary structure for unionisable staff was to be implemented through the Collective Bargaining Negotiations process.
35. Whereas the court appreciates the constitutional role of the SRC in addressing public officers' and county government workers' salaries under Article 230 of *the Constitution*, in its circular dated 12 September 2024, it acknowledged the need for parties to adhere to negotiating the salary structure through a negotiated CBA. Under the negotiations, parties can factor in the affordability and fiscal sustainability of the resultant implications for any salary adjustments.
36. The respondent does not claim recognition by the claimant.
37. An essential element leading to the next steps towards a CBA must first be addressed to properly place the respondent at the table with the claimant or the Board, and to allow for a negotiated salary structure for its members, leading to a CBA.
38. Unless such a step is prioritized, the notice dated 16 December 2024 calling for industrial action unless the various demands by the respondent and its members are addressed will remain irregular and unlawful. The application of the SRC circulars is addressed in the case of *Kenya National Union of Nurses v Salaries and Remuneration Commission & 2 others* [2025] KEELRC 2598 (KLR); *Salaries and Remuneration Commission v Kenya Union of Commercial Food and Allied Workers & 2 others* (Civil Appeal E489 of 2020) [2025] KECA. This position is reiterated in *Salaries and Remuneration Commission v National Hospital Insurance Fund, Management Board & 2 others* [2024] KECA 419 (KLR).
39. The court appreciates that parties have maintained peaceful industrial relations during the interim and pending the hearing of the claim. The respondent has maintained respect for the court orders herein



to allow the hearing and determination. Such a place should put the respondent in good standing with the claim and the Board while sitting to negotiate the next steps towards a CBA.

40. The court will require a report to sustain the momentum this far. To maintain industrial peace, there is no winner or loser. Each party is keen on achieving the best for the employee on the shop floor. No costs will be awarded.

### **Counterclaim**

50. The respondent is seeking the promotion of 240 nurses. The payment of promotion arrears and a declaration that the SRC approved remuneration structure for County Governments should be implemented.
51. In the case of *Galaxy Paints Company Ltd V Falcon Guards Ltd* [2000] KECA 215 (KLR), the court emphasized that where the core dispute involves a third party, such as the SRC in this case, there should be proper joinder. The claimant is enjoined to implement the SRC circular with the given conditions. In *National Hospital Insurance Fund Management Board v Kenya Union of Commercial Food and Allied Workers & another; Attorney General (Interested Party)* [2025] KESC 37 (KLR) the Supreme Court of Kenya held that a SRC circular once issued gives the concerned parties the parameters within which to operate. Context must be given to the conditions and any exceptional circumstances of each party.
52. In this regard, the SRC circular had conditions precedent before the claimant or the Board could implement it: affordability and fiscal sustainability. The respondent makes no case that the claimant can afford and has refused to implement.
53. These matters can form a sound basis for negotiations on the shop floor.
54. Accordingly, the claim and counterclaim having been addressed, the respondent's and its members' notice dated 16 December 2024 is irregular and shall not be implemented. The parties shall return to the negotiation table and address relations accordingly. A report back in 30 days on 9 December 2025.
56. For industrial peace, no orders on costs.

**DELIVERED IN OPEN COURT AT MOMBASA, THIS 30<sup>TH</sup> DAY OF OCTOBER 2025.**

**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant: Japhet

..... and .....

