

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT**  
**ELDORET**

**CONSTITUTIONAL PETITION NO. 4 OF 2020**

**IN THE MATTER OF ARTICLES 2,10,22(1),23,24(1)(2)  
(5),25,28,36,37,40,41(1)(2),43,47,50,159,176,258 AND 259  
OF THE CONSTITUTION**

**AND**

**IN THE MATTER OF ALLEGED VIOLATION AND/OR  
THREATENED VIOLATION OF FUNDAMENTAL RIGHTS AND  
FREEDOMS OF INDIVIDUALS AS ENSHRINED UNDER  
ARTICLES 25,28,36,40,43 AND 47 OF THE CONSTITUTION**

**BETWEEN**

**KENYA MEDICAL PRACTITIONERS,  
PHARMACISTS AND DENTISTS UNION(KMPDU) ...  
PETITIONER**

**VERSUS**

# **COUNTY GOVERNMENT OF UASIN GISHU .....**

## **RESPONDENT**

### **JUDGMENT**

#### **Introduction**

1. The Petitioner, as described in the Amended Petition, is a registered trade union representing all medical doctors in matters of employment and labour relations.
2. The Respondent is a public body established under the County Governments Act.

#### **The Petition**

3. The Petitioner herein filed the petition dated 11<sup>th</sup> March 2020 which was amended on 25<sup>th</sup> August 2020, invoking various Articles of the Constitution seeking the following reliefs:
  - a. That a declaration be issued that the Collective Bargaining Agreement between the Respondent and the Petitioner that became effective on 1<sup>st</sup> July 2017, registered under RCA 200/2017, Return to Work Formula between the Petitioner and the Respondent

entered into on 14.03.2017 and the Petitioner's scheme of service are legally binding and enforceable.

- b. That a declaration be issued that the Respondent is in Contempt with Respect to ELRC Certificate of Registration of Collective Bargaining Agreement - CA NO. 224 of 2017 issued by Hon. Linet Ndolo and accordingly prescribe relevant punishment against the Respondent as this Honourable court deems appropriate.
- c. THAT a declaration be issued that the strike called by the Petitioner in its Notice dated 10.8.2020 is lawful and therefore protected.
- d. THAT the Respondent be compelled to comply with, address and/or to implement the Collective Bargaining Agreement between the Respondent and the Petitioner that became effective on 1.07.2017 and registered under RCA 200 of 2017, Return to Work Formula entered into on 14.03.2017 by the parties herein and the Petitioner's Scheme of Service

with the Respondent and/or the contents of the strike notice dated 10.8.2020 and/or the petitioner's concerns and grievances therein.

e. That the Respondent be condemned to pay costs of this Petition.

4. The basis of the Petition is that the Petitioner and Respondent entered into a Collective Bargaining Agreement effective 1st July 2017, registered under RCA No. 200 of 2017, which the Petitioner avers the Respondent has failed, neglected, and refused to fully implement.
5. The Petitioner further avers that on 14<sup>th</sup> March 2017, the parties entered into a Return to Work Formula, which the Respondent has similarly failed, neglected, or refused to fully honour.
6. It is also contended that the Respondent has failed to honour the Petitioner's Scheme of Service.
7. The Petitioner asserts that on 4<sup>th</sup> February 2020, it declared a dispute regarding the implementation of the Ministry of Health and County Governments' CBA by reporting the same

to the Minister for Labour. However, neither the Minister nor the Respondent provided an adequate response.

8. The Petitioner further states that due to the onset of the COVID-19 pandemic, it called off the planned doctors' strike scheduled to begin on 18<sup>th</sup> March 2020, to allow its members, being essential service providers, to attend to the health crisis.
9. The Petitioner avers that the Respondent has failed to address the concerns and grievances which led to the intended strike of 18<sup>th</sup> March 2020, thereby continuing to injure the Petitioner to date.
10. The Petitioner contends that it was the Respondent's continued failure to address earlier and new grievances that led to the issuance of another strike notice dated 10<sup>th</sup> August 2020.
11. The Petitioner asserts that the purpose of this Petition was to avert the impending strike by compelling the Respondent to address the Petitioner's grievances to ensure

uninterrupted provision of essential health services to the public.

12. In sum, the Petitioner contends that the Respondent failed to act in good faith in implementing the Collective Bargaining Agreement effective 1<sup>st</sup> July 2017, the Return to Work Formula of 14<sup>th</sup> March 2017 and the Petitioner's Scheme of Service.
13. The Respondent did not file a response to the Petition.
14. The Petition was canvassed by way of written submissions pursuant to the directions of this court issued on 16<sup>th</sup> April 2024. The Petitioner's submissions are dated 16<sup>th</sup> May 2024 while the Respondent's submissions are dated 15<sup>th</sup> June 2025.

### **The Petitioner's submissions**

15. The Petitioner in its submissions identified the issues for determination to be:-
  - i. Whether or not there exists a Collective Bargaining Agreement between the Respondent and the Petitioner

- ii. Whether or not the Collective Bargaining Agreement between the Respondent and the Petitioner became effective on 1<sup>st</sup> July 2017 and registered under RCA NO. 233 OF 2017.
- iii. Whether or not there exists a Return-to-Work Formula between the Respondent and the Petitioner
- iv. Whether or not there exists a scheme of service in respect to the Petitioner's members
- v. Whether or not the aforesaid Collective Bargaining Agreement, Return to Work Formula between the Respondent and the Petitioner and the scheme of service are legally binding and enforceable.
- vi. Whether or not the Respondent is in contempt with respect to ELRC Certificate of Registration of Collective Bargaining Agreement CA No. 222 of 2017 issued by Honourable Justice Linet Ndolo
- vii. Whether or not the Respondent should comply with, address and/or implement the said collective Bargaining Agreement that became effective on 1<sup>st</sup>

July 2017, the Return-to-work formula of 14<sup>th</sup> March 2017 and the scheme of service.

- viii. Whether or not the Respondent should be directed to implement the aforesaid collective Bargaining Agreement, the Return-to-work Formula between the Respondent and the Petitioner and the scheme of service.
  - ix. Whether or not the Petitioner is entitled to the relief's sought.
  - x. Who is to bear the costs of this petition?
16. The Petitioner submitted that the CBA, Return to Work Formula, and Scheme of Service exist as evidenced by annexures attached to the affidavit in support of the Petition.
17. The Petitioner asserted that these documents are enforceable, having been duly executed by both parties, and that the Scheme of Service was approved by the Public Service Commission, making it binding.
18. It was further submitted that the Respondent's failure to implement the CBA amounts to contempt, and the Court should compel compliance.

19. The Petitioner emphasized that the CBA and Return to Work Formula were mutually negotiated and executed to avert industrial action. Therefore, in the interests of industrial harmony and public welfare, the Court should compel full implementation.
20. The Petitioner urged that the Respondent, having executed these instruments, should be ordered to implement them.
21. In conclusion, the Petitioner submitted that it is entitled to the reliefs sought and prayed for costs of the suit.

### **The Respondent's submissions**

22. On its part, the Respondents in its submissions identified the issues for determination to be:
  - i. Whether the Petition is moot having been overtaken by events
  - ii. Whether the Petition is tenable in light of the new circumstances
23. On the first issue, the Respondent reiterated that the Petition is no longer live or justiciable arguing that the reliefs sought have since been overtaken by events. According to the

Respondent, the Petitioner's grievances stemmed from the alleged non-implementation of the CBA dated 1<sup>st</sup> July 2017, the Return-to-Work Formula dated 14<sup>th</sup> March 2017 and the purported failure to respect a strike notice issued on 10<sup>th</sup> August 2020.

24. The Respondent asserted that since the filing of the present Petition, the 2017 CBA has lapsed after running its full five-year term and is therefore no longer enforceable as a living instrument; that a new CBA is under negotiation and deliberations have significantly progressed, signaling a departure from the issues raised in the 2017 CBA; that a new Return-to-Work Formula was agreed upon by the parties on 8<sup>th</sup> May 2024, addressing most of the issues previously in contention and incorporating updated terms, a revised Scheme of Service and that the strike notice dated 10<sup>th</sup> August 2020 has long lapsed and no longer has any legal force or effect, having neither been acted upon nor extended.

25. The Respondent thus maintained that these developments render the Petition academic and devoid of any practical utility as the Court would, in essence, be making declarations on instruments and actions that have since lost legal force, thereby acting in vain and expending valuable judicial time on obsolete questions. In support of this position, the Respondent cited the case of ***Agoro & Another v Governor, Mombasa County & 2 Others: Attorney General (Interested Party) [2024] KEHC 8336 (KLR)***.
26. On the second issue, whether the Petition is tenable, the Respondents submitted that the reliefs sought are now inconsistent with the current legal framework and industrial relations between the parties and in particular, that the declaration sought to enforce the 2017 CBA is no longer practical having expired considering the ongoing negotiations for a new CBA.
27. The Respondent further submitted that the Petitioner has not amended its prayers or pleadings to align with the current

circumstances. This failure, according to the Respondent, renders the instant petition defective.

28. The Respondent, in addition, asserted that judicial proceedings must reflect current realities, that where there is no ongoing dispute and no enforceable right or obligation exists, courts are duty-bound to decline invitations to issue declaratory reliefs that serve no substantive legal purpose.
29. On this basis, the Respondent argued that any intervention by the Court in this case would serve no lawful or remedial function, risk interfering with ongoing legitimate negotiation processes, and encourage stale or dormant litigation in the industrial relations space.
30. The Respondents maintained that the Petition is fundamentally untenable and urged the Court to find and hold it moot having been overtaken by events.
31. In conclusion, the Respondent urged the court to dismiss the Amended Petition dated 25<sup>th</sup> August 2020 with costs to the Respondents.

## **Determination**

32. From the Petition and the submissions on record, the main issue that fall for this court's determination is whether the Petition has been overtaken by events and is therefore moot.
33. The question of mootness arises where the issues in a petition have ceased to exist or have been overtaken by subsequent events, rendering any determination by the Court of no practical or legal consequence.
34. In the present case, it is not disputed that the Collective Bargaining Agreement (CBA) dated 1<sup>st</sup> July 2017 was for a period of five (5) years and therefore lapsed on 30<sup>th</sup> June by effluxion of time.
35. The Return-to-Work Formula dated 14<sup>th</sup> March 2017 was tied to the implementation of the same CBA, while the strike notice dated 10<sup>th</sup> August 2020 has since expired.
36. The Respondent contends that the Petition has been overtaken by events since the 2017 CBA has lapsed and a new CBA is currently under negotiation. It is further asserted that a new Return-to-Work Formula was executed on 8<sup>th</sup> May 2024, and that the previous strike notice is no longer in force.

37. Having considered the material before it, the Court is satisfied that the impugned instruments have served their intended term and that subsequent developments, including the ongoing negotiations for a new CBA, have rendered the prayers sought in respect of the 2017 CBA academic. The Court therefore finds that the Petition has been overtaken by events and is consequently moot.
38. Accordingly, the Amended Petition dated 25<sup>th</sup> August 2020 is hereby dismissed. This is however subject to the provisions of section 59 of the Labour Relations Act which provides that the terms of a CBA are incorporated into the terms of employment of employees subject thereto from the date of registration of the CBA.
39. Given the nature of the dispute and the need to encourage continued industrial harmony, each party shall bear its own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY  
THIS 29<sup>TH</sup> DAY OF OCTOBER, 2025.**

**M. ONYANGO**  
**JUDGE**