

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NYERI

CAUSE NO E049 OF 2025

THE COUNTY GOVERNMENT OF MARSABIT.....CLAIMANT

VS

KENYA UNION OF CLINICAL OFFICERS.....RESPONDENT

R U L I N G

1. This ruling determines the Notice of Motion dated 22nd October 2025, by which the Claimant seeks orders directing the Respondent to call off the strike commenced on 1st October 2025, and further directing the Respondent's members to report back to work.
2. The application is supported by an affidavit sworn by the Claimant's Acting County Secretary, Arero Halkano and is based on the grounds that:
 - a) Despite the Respondent's members being essential service providers in the healthcare sector, they have elected to proceed on an illegal and unprotected strike from 1st October 2025, contrary to Section 78(1)(f) and 81 of the Labour Relations Act, an action that has hindered healthcare in Marsabit County leading to aggravation of ailments and unnecessary deaths;
 - b) The Respondent's members are Clinical Officers employed by the Claimant, delivering essential services in Marsabit County. They are guided by Section 81 of the Labour Relations Act, thus their right to go on strike under Article 41 of the Constitution is not absolute. The strike

by all members of the Respondent, without leaving behind residual staff for emergency cases is thus prohibited and unprotected;

- c) Prior to the illegal strike, the Claimant and the Respondent's members and officials had a series of meetings to discuss the welfare of the Respondent's members and a Return to Work Formula was subsequently executed between the Claimant and the Respondent;
- d) Without any justification and in utter breach of the resolutions and/or ongoing resolutions, born out of the negotiations between the parties, the Respondent directed its members to go on the impugned strike;
- e) The strike is borne out of issues that the Claimant has been diligently and systematically addressing, thus illegal and unprotected as the parties were yet to exhaust all dispute resolution mechanisms available;
- f) The subject strike is illegal, unprotected and in very bad taste, noting the Respondent's engagements with the Claimant. The obtaining strike is not only illegal but also inimical to public policy and a breach of the Constitution of Kenya;
- g) This matter is extremely urgent owing to the great suffering of the people of Marsabit County, who are being denied access to healthcare, due to the illegal strike held at the behest of the Respondent's members;
- h) The Claimant has continuously engaged with the Respondent and is still ready and willing to continue engaging the union officials and members to resolve any impasse between the Claimant and the Respondent;

- i) Unless the Court intervenes with alacrity, certifies the matter urgent and grants interim orders, there is real risk of continuous loss of lives that depend on health services offered by the Respondent's members;
 - j) There is absolutely no perceivable or actual prejudice that shall be suffered by the Respondent and/or its members and it is in the interest of justice that the orders sought be granted.
3. The Respondent opposes the application by a replying affidavit sworn by its General Secretary & Chief Executive Officer, George Gibore on 3rd November 2025.
 4. Gibore depones that members of the Respondent proceeded on strike on 1st October 2025, after the Claimant failed to implement the Return to Work Agreements signed on 29th July 2024 and 14th April 2025. He adds that the execution deadline for these Agreements was 1st September 2025.
 5. Gibore accuses the Claimant of bad faith by requiring the Respondent's members to return to work, without issues of salary delays, lack of medical cover and delayed promotions being resolved. Additionally, it is deponed that the Claimant had issued show cause letters to the Respondent's members.
 6. Arero Halkano swore a supplementary affidavit on 12th November 2025 stating that the Respondent's members had been paid their salaries up to September 2025. He adds that all statutory deductions for the past two years had been remitted.

7. Regarding the issue of residual staff to deal with emergencies, the Respondent's position is that its members work alongside other health personnel who are capable of covering emergency gaps. The Respondent asserts that both parties are responsible for ensuring minimum safety measures that ought to be in place in the event of a strike.
8. Halkano assigns the delay in resolving the grievance on medical cover, to procurement challenges involving the Ethics and Anti-Corruption Commission, the Public Procurement Regulatory Authority and the Public Procurement Administrative Review Board.
9. On the issue of promotions and re-designations, it is deponed that the County Assembly had rejected the departmental budget for FY 2025/2026 advising that the issue ought to be dealt with holistically, not per cadre.
10. In response to the Claimant's supplementary affidavit, the Respondent filed a further affidavit sworn by its General Secretary, George Gibore on 21st November 2025.
11. Gibore points out that salaries for the month of October 2025 had not been paid. He adds that the Claimant has not availed any evidence to support the averment that budget requisition had been presented and rejected by the County Assembly.
12. From the parties' pleadings it is evident that the industrial action, which is the subject of this application, was triggered by real grievances. The Court is however also aware that the workers involved in the strike are engaged in essential service.

13. The mode of executing and managing industrial action in the health sector was established by a three-judge bench of this Court (Mbaru, Abuodha & Ndolo JJ) in ***Joseph Otieno Oruoch v Kenya Medical Practitioners Pharmacists & Dentists Union & another [2021] KEELRC 1147 (KLR)*** where it was held that health workers are engaged in essential service, and their right to participate in industrial action is contingent upon retention of 'minimum service' at the affected facilities, to ensure that there is no danger to life or health of members of the public.
14. In reaching its decision, the bench in ***Joseph Otieno Oruoch*** (supra) considered both international law and domestic statutory provisions. Section 78(1)(f) of the Labour Relations Act prohibits strikes in essential service sectors.
15. Section 81 of the Act defines an essential service 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. Under the Fourth Schedule to the Act, hospital services are listed as an essential service.
16. The *Digest of Decisions of the Freedom of Association Committee of the ILO Governing Body* provides for restriction of the right to go on strike where interruption of service would endanger the life, personal safety or health of the whole or part of the population.
17. There is no contest that members of the Respondent are engaged in an essential service and their right to go on strike is therefore limited. No mention was made of any residual staff retained at the health facilities

affected by the strike. To that extent the strike did not meet the threshold established in the **Oruoch Case** (supra).

18. It was however not lost on the Court that the Claimant had, without proper justification, reneged on duly executed Return to Work Agreements.

19. In the circumstances, balancing the rights of the workers against public interest, I will suspend the strike for a period of thirty (30) days, to allow the parties an opportunity to negotiate in good faith. No person shall be victimised or subjected to any disciplinary process or action on account of participating in the strike.

20. Parties are directed to file a progress report on the negotiations before the lapse of 30 days.

21. There shall be no order for costs.

22. Orders accordingly.

DELIVERED VIRTUALLY THIS 10TH DAY DECEMBER 2025

LINNET NDOLO

JUDGE

Appearance:

Ms Gekone for the Claimant

Ms Ngome with Mr. K'Odongo for the Respondent