

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**OF KENYA AT NAIROBI**  
**JUDICIAL REVIEW NO. E027 OF 2025 CONSOLIDATED**  
**WITH JUDICIAL REVIEW NO. E057 OF 2025**  
**IN THE MATTER OF AN APPLICATION FOR**  
**PROCEEDINGS IN THE NATURE OF JUDICIAL REVIEW**  
**AND**  
**IN THE MATTER OF ARTICLE 47 OF THE CONSTITUTION**  
**OF KENYA**  
**AND**  
**IN THE MATTER OF SECTION 12 OF THE EMPLOYMENT**  
**AND**  
**LABOUR RELATIONS COURT ACT, 211 LAWS OF**  
**KENYA**  
**AND**  
**IN THE MATTER OF THE FAIR ADMINISTRATIVE**  
**ACTION ACT, 2015**  
**AND**

**IN THE MATTER OF: SECTIONS 8 AND 9 OF THE LAW  
REFORM ACT CAP 26 LAWS  
OF KENYA**

**-AND-**

**IN THE MATTER OF RULE 10(2) OF THE EMPLOYMENT  
AND LABOUR RELATIONS  
COURT (PROCEDURE) RULES, 2024.**

**-BETWEEN-**

**KENYA UNION OF CLINICAL OFFICERS**

**.....APPLICANT**

**-VERSUS-**

- 1. BARINGO COUNTY PUBLIC SERVICE BOARD**
- 2. BOMET COUNTY PUBLIC SERVICE BOARD**
- 3. BUNGOMA COUNTY PUBLIC SERVICE BOARD**
- 4. BUSIA COUNTY PUBLIC SERVICE BOARD**
- 5. ELGEYO MARAKWET COUNTY PUBLIC SERVICE  
BOARD**
- 6. EMBU COUNTY PUBLIC SERVICE BOARD**
- 7. GARISSA COUNTY PUBLIC SERVICE BOARD**

- 8. HOMA BAY COUNTY PUBLIC SERVICE BOARD**
- 9. ISIOLO COUNTY PUBLIC SERVICE BOARD**
- 10. KAJIADO COUNTY PUBLIC SERVICE BOARD**
- 11. KAKAMEGA COUNTY PUBLIC SERVICE BOARD**
- 12. KERICHO COUNTY PUBLIC SERVICE BOARD**
- 13. KIAMBU COUNTY PUBLIC SERVICE BOARD**
- 14. KILIFI COUNTY PUBLIC SERVICE BOARD**
- 15. KIRINYAGA COUNTY PUBLIC SERVICE BOARD**
- 16. KISII COUNTY PUBLIC SERVICE BOARD**
- 17. KISUMU COUNTY PUBLIC SERVICE BOARD**
- 18. KITUI COUNTY PUBLIC SERVICE BOARD**
- 19. KWALE COUNTY PUBLIC SERVICE BOARD**
- 20. LAIKIPIA COUNTY PUBLIC SERVICE BOARD**
- 21. LAMU COUNTY PUBLIC SERVICE BOARD**
- 22. MACHAKOS COUNTY PUBLIC SERVICE BOARD**
- 23. MAKUENI COUNTY PUBLIC SERVICE BOARD**
- 24. MANDERA COUNTY PUBLIC SERVICE BOARD**
- 25. MERU COUNTY PUBLIC SERVICE BOARD**
- 26. MIGORI COUNTY PUBLIC SERVICE BOARD**

- 27. MARSABIT COUNTY PUBLIC SERVICE BOARD**
- 28. MOMBASA COUNTY PUBLIC SERVICE BOARD**
- 29. MURANGA COUNTY PUBLIC SERVICE BOARD**
- 30. NAIROBI COUNTY PUBLIC SERVICE BOARD**
- 31. NAKURU COUNTY PUBLIC SERVICE BOARD**
- 32. NANDI COUNTY PUBLIC SERVICE BOARD**
- 33. NAROK COUNTY PUBLIC SERVICE BOARD**
- 34. NYAMIRA COUNTY PUBLIC SERVICE BOARD**
- 35. NYANDARUA COUNTY PUBLIC SERVICE BOARD**
- 36. NYERI COUNTY PUBLIC SERVICE BOARD**
- 37. SAMBURU COUNTY PUBLIC SERVICE BOARD**
- 38. SIAYA COUNTY PUBLIC SERVICE BOARD**
- 39. TAITA TAVETA COUNTY PUBLIC SERVICE BOARD**
- 40. TANA RIVER COUNTY PUBLIC SERVICE BOARD**
- 41. THARAKA NITHI COUNTY PUBLIC SERVICE BOARD**
- 42. TRANS NZOIA COUNTY PUBLIC SERVICE BOARD**
- 43. TURKANA COUNTY PUBLIC SERVICE BOARD**
- 44. UASIN GISHU COUNTY PUBLIC SERVICE BOARD**
- 45. VIHIGA COUNTY PUBLIC SERVICE BOARD**

**46. WAJIR COUNTY PUBLIC SERVICE BOARD**

**47. WEST POKOT COUNTY PUBLIC SERVICE**

**BOARD.....RESPONDENTS**

**-AND-**

**PUBLIC SERVICE COMMISSION...1<sup>ST</sup> INTERSTED PARTY**

**MINISTRTY OF HEALTH.....2<sup>ND</sup> INTERESTED PARTY**

**COUNCIL OF GOVERNORS.....3<sup>RD</sup> INTERSTED PARTY**

*(Before Hon. Justice Byram Ongaya on Wednesday 17<sup>th</sup> December,*

*2025)*

**JUDGMENT**

1. This is judgment in the consolidated petitions. In the lead file E027 of 2025, the applicant is Kenya Union of Clinical Officers against the 47 County Governments and respondents with Public Service Commission, the Ministry of Health, and the Council of Governors named as interested parties. In E057 of 2025 the applicant is the Kenya Union of Clinical Officers against the Council of Governors and the public Service Commission as respondents. AKO Advocates appeared for the applicant in both cases. Learned Counsel Valentine Ataka Advocate filed both

applications for the applicant. Mr. Odongo and Mr. Ombwayo Advocates appeared in that behalf.

2. The background to the application is as follows:

a) The Public Service Commission approved Career Guidelines for Clinical Officers to be effective from 08.05.2024, The approved Career Guideline provides a training scope, creation of posts, grading structure consisting of hierarchy of grades, conversion of serving officers to align the new grading structure, defining of entry and terminal grades which is being guided by academic and professional qualifications, training and experience as well as direct appointments which is to be made in the grade of Registered Clinical Officer II (Job group J), for Diploma Holders and Clinical Officers, Civil Service Grade (CSG) “10” for Higher National Diploma Holders and degree holders.

b) The Honourable court is asked to take judicial notice of a Judgement rendered in **Machakos ELRCPET No. E005** of 2024, in a matter between County Government of

Machakos (The 22nd Respondent) and the Applicant herein, where Ongaya J. held thus,

“...The cross – respondent (Petitioner) are in breach of the union members’ rights to fair labour practices under Article 41 of the constitution by unfairly refusing and failing to effect promotions and redesignation as provided for in the Human Resource Policies and Procedures Manual for the Public Service May, 2016.

...The declaration that the cross-respondent (Petitioner) is in breach of the union members’ right to fair labour practices under Article 41 of the constitution by unfairly refusing and failing to effect the new career guidelines for the members of the cross-petitioner who are in the employment as provided for in the career guidelines for clinical offices, approved by the Public Service Commission on 9th May 2024. ...The orders of Mandamus is hereby issued compelling the cross respondent (Petitioner) to implement the new career guidelines for the members of the cross-petitioners who are in the

employment as provided for in the career guidelines for clinical officers, approved by the Public Service Commission on 9th May 2024...”

- c) The Career Guidelines for Clinical Officers are said to apply to all the 47 County Governments as well as the National Government with respect to Clinical Officers in the public services across the republic.
- d) The Commission and the Council of Governors have on 03.09.2025 at an extra-ordinary Council meeting. It is pleaded that the two respondent have without notification or consultation with the various cadres of health issued directives on 3<sup>rd</sup> September 2025, following the extra ordinary council meeting held on 2<sup>nd</sup> September 2025, for an immediate withdrawal and suspension of all the approved career guidelines for various cadres of health workers and any career guidelines currently under development, which withdrawal greatly affects and prejudice the applicant and its members.

e) It is of great apprehension that the withdrawal and suspension of these career guidelines and more particularly the already enacted career guidelines for the Applicant (Clinical Officers) in May, 2024 by the 2nd Respondent, will deter the goodwill that several Counties had commenced, in terms of implementing the already negotiated agreements (Return to Work Agreements), and in line with the approved career guidelines.

f) The withdrawal directives as issued by the 1<sup>st</sup> and 2<sup>nd</sup> respondents have indeed threatened the industrial peace and service delivery of the essential services offered by the applicant's members in their respective Counties. If the withdrawal and suspension of the career guidelines are not averted by this Honourable Court, then the withdrawal of the guidelines will cause great industrial unrest to the detriment of the applicant and its members.

g) The meeting and decision of 2<sup>nd</sup> September 2025 by the Commission to withdraw and suspend the already enacted career guidelines without any grave justification has been

made maliciously and vindictively without the involvement of the applicant and other cadres of health, who have already implemented these guidelines. The interested parties being various counties have not raised any objections with the applicant or other cadres of health challenging the validity of these career guidelines and more specifically, the enacted career guidelines for Clinical Officers in May, 2024 have not been challenged by any interested party.

- h) The conflict caused by these directives to withdraw and suspend the career guidelines will as much cause more conflict with the related Human Resource Policies and Procedures Manual for the Public Service May, 2016, which provides for recruitment, selection, appointment, promotions and transfer matters in the public service, as well as recognizing the guidelines on career progression, secondments and transfer of officers from one organization to another and other related matters.
- i) The lack of goodwill by the respondents by issuing these directives without consulting with the various cadres of

health have greatly affected matters of engagement between the Applicant and its members in various departments within the cadres, which is now threatening the industrial peace and service delivery of the essential services in their respective Counties.

j) The decision to withdraw and suspend the career guidelines herein will cause untold professional chaos and mismanagement. The applicant therefore urges the Honourable Court to intervene and quash the decision of the respondents herein to withdraw and suspend the career guidelines enacted by the Commission.

3. In E051 of 2025 the applicant trade union prayed for reliefs as follows:

a) An order of CERTIORARI to remove into this Honourable Court and quash the resolution by the Council of Governors ostensibly reached during the meeting of 2<sup>nd</sup> September 2025, restraining the Public Service Commission from implementing the resolutions of the Council of Governors

as contained in the letter Ref. COG/7/2/VOL.3 (71) dated 3<sup>rd</sup> September, 2025.

b) An order of CERTIORARI to remove into the Honourable Court and quash the decision/directives/resolutions issued by the Respondents withdrawing and suspending all Career Guidelines for Various Health Cadres Developed by the 2nd Respondent, conveyed vide letter Ref. COG/7/2/VOL.3 (71) dated 3<sup>rd</sup> September 2025.

4. In the earlier E027 of 2025 the applicant unions prayed for reliefs as follows:

a) An order of CERTIORARI to remove into the Honourable Court and quash the decision of the Respondents (the County Public Service Boards) herein in declaring job vacancies in their respective County Public Service Boards inviting applications in the Health which job adverts not being in tandem with the Approved Career Guidelines for Clinical Officers in May, 2024 as approved by the Public Service Commission.

- b) An ORDER of MANDAMUS compelling the respondents (the County Public Service Boards) implement the Approved Career Guidelines for Clinical Officers in May, 2024 as approved by the Public Service Commission during recruitment, appointment, confirmation in appointment and promotion, redesignation and all other related areas.
- c) The Judgement issued in Machakos ELRCPET No. E005 of 2024 – County Government of Machakos Vs. Kenya Union of Clinical Officers be and is hereby adopted as a decree of this court.
5. The letter by H.E. Ahmed Abdullahi EGH, the Chairperson of the Council of Governors was dated 03.09.2025 and was addressed to Amb. Anthony Muchiri, CBS, Chairperson of the Public Service Commission. The letter was titled “Request to rescind all Career Guidelines for Various Health Cadres Developed by the Public Service Commission without Consultation with County Governments”. The letter proceeded as follows,
- “Reference is made to the Extra-ordinary Council of Governors Meeting which the Public Service Commission attended, held on

2<sup>nd</sup> September 2025 to deliberate on the matter of development of career guidelines by the Public Service Commission for implementation by County Governments without their involvement or consultation.

The Council noted with great exception that the PSC had developed and approved for implementation Career Guidelines for various Cadres of Health professionals without consultation or involvement of County Governments who are the employers of majority of the health of the health workers. The Council also noted that the guidelines if implemented, would have huge financial implications on County Governments whose budgets have not been increased in the equitable share of revenue.

The meeting resolved that the Public Service Commission immediately rescinds the said career guidelines. The Council further directed the Commission to desist from developing or approving Cadre based Career Guidelines for health workers in County Governments.

The Purpose of this letter is therefore to request the Commission to withdraw all the approved Career Guidelines for the various

cadres of health workers and to suspend any career guidelines currently under development to allow for consultations between the two levels of Government on modalities of financing these policy documents.

The Council remains available for further discourse on the subject.

Please accept the assurance of our highest esteem and consideration.”

6. The letter dated 03.09.2025 signed by Mary Mwiti, EBS, Chief Executive Officer of the Council of Governors was addressed to all Excellency Governors and copied to all County Secretaries and all County Executive Council Members (CECMS) in charge of health and county public service. The letter forwarded the resolutions of extra-ordinary meeting of the Council of Governors held on 1<sup>st</sup> and 2<sup>nd</sup> September 2025 to deliberate on urgent matters affecting County Governments particularly in the health sector and implementation of e-procurement. The resolution on “Career Guidelines for the Health Care Workers” thus, “The Council of Governors to formally write to the Public Service Commission to

rescind the Career Guidelines for Clinical Officers and other health workers to allow for meaningful consultations to endure that the interests of county governments and their workforce are fully considered.” Further on career guidelines and salary review for health workers thus, “The Council of Governors shall hold a consultative meeting with the Public Service Commission (PSC) and the Salaries and Remuneration Review Commission (SRC) to deliberate and agree on a way forward on the development of career progression guidelines and the review of basic salaries for health workers.”

7. The General Secretary of the applicant trade union George M.Gibore addressed to the Chairperson of the Council of Governors the letter dated 04.09.2025 and copied to the Cabinet Secretary Ministry of Health; the Secretary/CEO of Public Service Commission; the 47 County Public Service Boards; and all its branch Secretaries. The letter referred to the letter by the Chairperson of the Council of Governors dated 03.09.2025 and addressed to the Chairperson of Public Service Commission directing the Commission to desist from developing or approving

Cadre based Career Guidelines for health workers in County Governments; and requesting the Commission to withdraw all the approved Career Guidelines for the various cadres of health workers and to suspend any career guidelines currently under development to allow for consultations between the two levels of Government on modalities of financing these policy documents. The letter by the trade union's General Secretary stated that it was not true that the Commission had developed the Clinical Officers Career Guidelines and those of other cadres of health workers but that they had been developed consultatively per particularized meetings and correspondences. It stated that the Commission had undertaken the review of the guidelines through stakeholder engagement and participation which were approved with implementation date being 08.05.2024. The letter drew the Council of Governor's attention to the judgment **in ELRC Petition E005 pf 2024 between the Machakos County V Kenya Union of Clinical Officers** and orders issued to implement the Career Guidelines. The Union General Secretary's letter concluded thus "We hereby DEMAND THAT you

immediately withdraw this letter and proceed to disseminate the Guidelines to your constituent County Governments for subsequent implementation. By way of this letter, we advise the PSC to ignore your resolutions.”

8. The applicant has exhibited the career guidelines as approved by the Public Service Commission in May 2024 and forwarded to the trade union by letter dated 20.05.2024 addressed to the union General Secretary confirming that the career guidelines had been approved by the Commission and the letter concluded thus, “Consequently, the Public Service Commission has discharged its obligation by dint of approving and releasing the Career Guidelines for Clinical Officers which was among the demands spelt out in your Strike Notice Ref. No. KUCO/CGK/CS/02/2024/55 of 25<sup>th</sup> March, 2024.”
9. Further the letter dated 09.05.2024 was addressed to Mary Muthoni Muriuki, CBS, Principal Secretary, State Department for Public Health and Professional Standards. It was signed by R.N. Mulati, MBS, Ag. Secreatry/CEO, Public Service Commission. The letter Communicated that the Commission had

considered the request by the Principal Secretary and approved the Career Guidelines for Clinical Officers which were being issued for implementation with effect from 08.05.2024. The letter was copied to Mr. Amos Njoroge Gathecha, MBS, and Principal Secretary, State Department for Public Service and Ms. Mary Mwiti, CEO, Council of Governors. It concluded thus, “The approved Career Guidelines provide clear and concise job descriptions and specifications at all levels within the grading structure. Provisions of these details will no doubt greatly assist in the recruitment, deployment, retention and general development of Clinical Officers. Please take necessary action and ensure that the provisions of the New Career Guidelines are brought to the attention of all Institutions and officers concerned.”

10. The Court has perused the Career Guidelines for Clinical Officers as approved in May 2024 by the Public Service Commission. Section one is on general provisions. The following are some of the pertinent provisions from that section:

a) The aims and objectives of the career guidelines are listed as follows:

i) To provide for a well-defined career structure which will attract, motivate and retain suitably qualified Clinical Personnel at the National and County Governments.

ii) To provide for well –defined job descriptions and specifications with clear definition of duties and responsibilities at all levels within the career structure to enable Clinical Personnel understand the requirements and demands of their jobs.

iii) To establish standards for recruitment, training and advancement within the Career Structure on the basis of qualifications, knowledge, merit and ability as reflected in work performance and result.

iv) To ensure appropriate career planning and succession management.

b) On responsibility and administration it is stated: The Career Guideline will be administered by the Principal Secretary

responsible for the Clinical Services Function at the National Government in conjunction with the Public Service Commission and the Chief Officer responsible for Health Services in conjunction with the County Public Service Board. In administering the Guideline, the Principal Secretary/County Chief Officer for Health will ensure that its provisions are strictly observed for fair and equitable treatment of staff and that officers are confirmed in their appointment on successful completion of the probation period.

- c) On implementation of the career guidelines it is stated: These Career Guidelines will become operational with effect from the date of approval by the Public Service Commission/ County Public Service Board and shall supersede any other existing Guidelines. On implementation, all serving officers will automatically become members of respective Career Guidelines.

d) On review of career guidelines it is provided: The Career Guideline may be reviewed after four (4) years or before the stipulated time frame due to the following:—

- a. Changes in the Grading Structure;
- b. Expansion and/or merger with other State departments;
- c. Abolition of posts;
- d. Release of Executive Order;
- e. Development and review of various policies, legislations, and Acts;
- f. Job evaluation;
- g. Changes in technology;
- h. Constitutional amendment;
- i. Restructuring of the Ministries/State Departments/County Department;
- j. Presidential decree; and,
- k. De-linking of functional areas in the Ministries/State Departments among other factors.

11. The 9<sup>th</sup> respondent Isiolo County Public Service Board appointed Kiunga Kingirwa & Company Advocates to act in the matter and filed the grounds of opposition dated 27.10.2025 stating that the application for the applicant was bad in law, vexatious and the reliefs not tenable in law.

12. The 4<sup>th</sup> respondent Busia County Assembly appointed Mabachi Stephen the learned County Legal Counsel to act in the matter. It was submitted as follows:

a) Busia County was not a party to ELRC Petition No.E005 of 2024 at Machakos and the judgment therein cannot be applied to Busia County as urged for the applicant union. Under Article 25 of the Constitution the right to fair hearing is absolute as it cannot be limited at all.

b) The Career Guidelines in issue cannot apply to Busia County because each county has its own unique issues as stated in the County's replying affidavit. To require the County Government to implement them would violate Article 10 of the Constitution prescribing participation in

the development of the guidelines but the County had not been involved at all.

c) The Council of Governors had raised the objects and requested the Commission to withdraw the guidelines.

13. The Council of Governors appointed Mr. Eugene N. Lawi Advocate to act in the matter and Mr. Kataka Advacte held brief and attended proceedings in that behalf. A preliminary objection was filed upon the ground that under Article 234(3) the constitutional human resource powers and functions of the Commission does not apply to County Government employees or Public Service. The applications herein are an affront to that constitutional provision and be dismissed as misconceived and an abuse of court process.

14. The County Attorney for Makueni County entered appearance for the 23<sup>rd</sup> respondent and Mr. Njeru Advocate appeared in that behalf. It was urged and submitted as follows:

a) The Commission had acted ultra vires its constitutional power and functions in purporting to issue career guidelines to bind the County Governments.

- b) The County of Makueni is autonomous in law and cannot be bound by the judgment in ELRC Petition No.E005 of 2024 at Machakos because it was not a party thereto.
- c) Section 31 of the Intergovernmental Relations Act provides that national and county governments to exhaust measures for dispute resolution including use of alternative dispute resolution and amicable resolution of disputes as contemplated in Article 189 (3) and (4) of the Consitution.

15. Mr. Kataka Advocate for Council of Governors submitted orally and urged that the letter by the Chairperson of the Council dated 03.09.2025 declared the Council's position in the matter .It was submitted that the applications could be determined in terms that Article 234(3) prevails in that the powers of Public Service Commission do not spread to the county governments and the guidelines to stand recalled. Counsel further submitted that the guidelines imposed financial obligations but the necessary.

16. The Commission did not file papers. However learned Counsel Mr. Ondukenya appeared and submitted orally that indeed as submitted for the Council the powers of the Commission are

excluded from application to the county governments and that the Commission's letter in May 2024 was copied to the Council of Governors in error.

17. For the applicant union Mr. Odongo submitted that the Career Guideline document was a policy document.
18. The Court has considered the material on record and the submissions made by Counsel and returns as follows.
19. To answer the **1<sup>st</sup> issue**, the Court finds that the career guidelines are indeed a policy document. As a policy document it emanated from the Cabinet Secretary and Principal Secretary at the Ministry of Health. In approving the document within its constitutional mandate, the Commission was not moving of its own motion but it was answering and responding to the request by the Ministry as was elaborated in the letter to the Ministry conveying the approval of the Career Guidelines. The Forth Schedule to the Constitution of Kenya 2010 provides for "Distribution of Functions Between the National Government and the County Governments". At No.28 of the National Government functions is Health Policy; at No.13 is Labor Standards; at No.15

is Education policy, standards, curricula, examinations and the granting of university charters. It appears that the Career Guidelines were initiated by the Ministry as a national government function over health policy and the related cited policy functions and thereafter requested the Commission to issue an approval in view of the Commission's constitutional functions and powers over human resources in the national government per Article 234 of the Constitution. Thus, it is not shown for the Council of Governors and the County Public Service Boards how the Career Guidelines as a policy document impaired the constitutional provision in Article 235 that: (1) A county government is responsible, within a framework of uniform norms and standards prescribed by an Act of Parliament, for — (a) establishing and abolishing offices in its public service; (b) appointing persons to hold or act in those offices, and confirming appointments; and, (c) exercising disciplinary control over and removing persons holding or acting in those offices envisaged functions have been vested in the county public service boards under the County Governments Act. Further it has not been

shown how the guidelines would have amounted to spreading the powers of the Commission over the county public services as alleged for the Council and the county public service boards. In formulating the policies by way of guidelines, the Ministry and the Commission were alert that the Commission and the county public service boards played parallel human resource functions at the national and the county levels of government respectively. Thus on implantation, the guidelines expressly stated thus, “These Career Guidelines will become operational with effect from the date of approval by the Public Service Commission/ County Public Service Board and shall supersede any other existing Guidelines. On implementation, all serving officers will automatically become members of respective Career Guidelines.” It is not therefore true that in approving the career guidelines the Commission was applying its powers and functions over counties and contrary to Article 234(3) providing that the mandate of the Commission does not apply to an office in the service of a county government, except as contemplated in clause (2) (i), being,

appeals to the Commission from human resource decisions of the County Governments public services.

20. To answer the **2<sup>nd</sup> issue** and as submitted for the County Governments, the judgement in ELRC Petition No.E005 of 2024 at Machakos cannot be binding upon the county governments that were not party thereto except as far as the terms therein were in rem and of general declaratory nature. The submissions for the county public serve boards in that respect are upheld.

21. The third issue is on remedies. The Court returns as follows:

- a) The applicant is entitled to an order of CERTIORARI to remove into this Honourable Court and quash the resolution by the Council of Governors ostensibly reached during the meeting of 2<sup>nd</sup> September 2025 and thereby effectively restraining the Public Service Commission from implementing the resolutions of the Council of Governors as contained in the letter Ref. COG/7/2/VOL.3 (71) dated 3<sup>rd</sup> September, 2025. While making that finding it has been shown for the applicant that by approving the resolutions, the Commission did not make it mandatory for the County

Governments to implement them but such implementation was possible consequential to approval by the respective county public service boards. Further and in that view, some counties had already exercised an option to implement the guidelines directly or through their incorporation in agreements with the applicant trade union such as was in the Return to Work Formula (RTWF) as found in the said ELRC Petition No.E005 of 2024 at Machakos. Further, the guidelines applied to clinical officers in the national government as already approved by the Commission and it would be manifestly unfair for the Commission to withdraw the guidelines at adversity to the officers already enjoying the provisions therein. The accrued rights of clinical officers who may be already enjoying the benefit of the guidelines both at national and county governments should not be disrupted. It would amount to unfair labour practices to arbitrarily vary accrued employee rights.

b) For reasons already stated in the foregoing finding, the applicant is entitled to an order of CERTIORARI to remove

into the Honourable Court and quash the decision/directives/resolutions issued by the Public Service Commission or the Council of Governors withdrawing and suspending all Career Guidelines for Various Health Cadres developed or approved by the Commission, and as particularly conveyed vide letter Ref. COG/7/2/VOL.3 (71) dated 3<sup>rd</sup> September 2025 for the Council of Governors.

- c) The applicant is not entitled to an order of CERTIORARI to remove into the Honourable Court and quash the decision of the Respondents (the County Public Service Boards) herein in declaring job vacancies in their respective County Public Service Boards inviting applications in the Health which job adverts not being in tandem with the Approved Career Guidelines for Clinical Officers in May, 2024 as approved by the Public Service Commission. First, the alleged job adverts have not been exhibited and the Court cannot quash a decision or process not exhibited unless, the applicant, upon good reason shown, has applied and obtained leave in that respect. Second, the Court has found

that the individual county government service boards have an option to apply the guidelines and the order cannot issue upon that consideration.

d) The applicants pray for An ORDER of MANDAMUS compelling the respondents (the County Public Service Boards) implement the Approved Career Guidelines for Clinical Officers in May, 2024 as approved by the Public Service Commission during recruitment, appointment, confirmation in appointment and promotion, redesignation and all other related areas. It is trite law that an order of mandamus can only issue if after making demand, the public authority or person obligated to perform the statutory or public duty nevertheless has failed or neglected to act. That test has not been established in the instant case. In any event, the sweeping prayer as against all counties cannot issue as it is not show which of the counties have opted to implement the guidelines and those that have not so implemented. It appears to the Court that the implementation disputes should be left to county by county

basis such as was decided in ELRC Petition No.E005 of 2024 at Machakos.

e) The Court has already found that the Judgement issued in Machakos ELRCPET No. E005 of 2024 – County Government of Machakos Vs. Kenya Union of Clinical Officers cannot be adopted as a decree of this court as to apply to the county governments who were not parties thereto. Thus, the prayer is declined.

f) No costs were prayed for and the Court considers it was correctly so because parties are in continuing labour relationship. Each will bear own costs of the petition.

In conclusion judgment is hereby entered for the applicant and the two judicial review applications now determined with orders as follows:

1) The order of CERTIORARI hereby issued to remove into this Honourable Court and quash the resolution by the Council of Governors ostensibly reached during the meeting of 2<sup>nd</sup> September 2025 and thereby effectively restraining the Public Service Commission from implementing the resolutions of the

Council of Governors as contained in the letter Ref. COG/7/2/VOL.3 (71) dated 3<sup>rd</sup> September, 2025.

- 2) The order of CERTIORARI hereby issued to remove into the Honourable Court and quash the decision, directives or resolutions issued by the Public Service Commission or the Council of Governors withdrawing and suspending all Career Guidelines for Various Health Cadres developed or approved by the Commission, and as particularly conveyed by and flowing from the letter Ref. COG/7/2/VOL.3 (71) dated 3<sup>rd</sup> September 2025 issued for the Council of Governors, or any like letter.
- 3) Each party to bear own costs of the applications.

**Signed, dated and delivered by video-link and in court at Nairobi this Wednesday 17<sup>th</sup> December, 2025.**

**BYRAM ONGAYA, PRINCIPAL JUDGE**