REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT

AT NAIROBI

ELRC CAUSE NO. 1415 OF 2018

(Before Hon. Lady Justice Hellen Wasilwa, J)

KENYA SHIPPING, CLEARING, FREIGHT

LOGISTICS & WAREHOUSES WORKERS UNION……. CLAIMANT

VS

VEGPRO KENYA LIMITED……RESPONDENT

AND

KENYA UNION OF COMMERCIAL

FOOD AND ALLIED WORKERS UNION……INTERESTED PARTY

RULING

1 The Claimant/Applicant filed a Notice of Motion dated 13th October 2025 seeking orders that: -

1. *spent*
2. *pending the hearing and determination of the appeal under E780 of 2025 appealed by herein Respondent, the Honourable court be pleased to issue an injunction restraining the Respondent from deducting medical check-up from the employees salary/wages until the final determination of the appeal.*
3. *pending the hearing and final determination of the appeal the Honourable court be pleased to issue an*

order compelling the Respondent to refund the already deducted and or intending to deduct medical check-up from the employees salaries/wages until the appeal is heard and determined.

4. *the cost of this application abide the outcome of the appeal and be provided for in the final determination of the appeal.*

Claimant/Applicant's Case

2 The It is the Applicant's case that the judgment delivered on 22nd May 2025 expressly found that the sum of Kshs. 1,000 charged per employee for medical check-ups was refundable, the Respondent having failed to deny the Applicant/Claimant Union's pleaded position that medical check-ups are the Respondent's own operational cost.

3 The Applicant avers that medical examinations are a mandatory requirement under the Respondent's business arrangements with its clients and, as such, cannot lawfully be transferred to employees.

4 The Applicant avers that following delivery of the judgment, it formally sought execution through its letter dated 4th August 2025, but the Respondent failed and/or neglected to comply with the Court's orders.

5 It is the Applicant's case that despite full knowledge that medical check-up costs are not employee costs, the Respondent instead filed an application dated 18th August

2025 seeking a stay of execution. The application was calculated to delay and frustrate enforcement of the judgment.

6 The Applicant further avers that the Respondent sought orders for stay, review, and variation of the judgment, notwithstanding that an appeal had already been lodged in Appeal No. E780 of 2025.

7 It is the Applicant's case that the Respondent's simultaneous pursuit of review and appeal is procedurally improper and amounts to an abuse of the court process.

8 Notwithstanding the pending application and appeal, the Respondent proceeded to pass the medical check-up costs to employees through a memo dated 27th September 2025, in disregard of the judgment and the ongoing court process.

9 The Applicant avers that the Respondent has continued to exploit employees, prompting a cautionary letter from it dated 18th September 2025. However, the Respondent persists in subjecting injured employees to unfair and inhumane working conditions by compelling them to work while standing, as complained of in the letter dated 5th September 2025.

10 It is the Applicant's case that the Respondent's conduct demonstrates continued non-compliance with the

judgment of this Court and ongoing unfair labour practices, thereby justifying this Court's intervention

Respondent's Case

11 In opposition to the application, the Respondent filed a Notice of Preliminary Objection dated 21st November 2025 on points of law. It seeks that the application be struck out in *limine* on the following grounds:

1. *The prayers sought in the Application are incapable of being granted as such, it would serve no purpose to allow the application for injunctive orders.*
2. *THAT the proceedings herein offend the principle of res judicata as provided for in section 7 of the Civil Procedure Act Cap 21 Laws of Kenya in view of the fact that the issues raised in the present application were directly and substantially in issue in the main cause, were heard and finally determined by this Honourable Court in its judgment delivered on 22nd May, 2025 and cannot be re-litigated.*
3. *THAT in the alternative to paragraph 2 above herein, the proceedings herein are barred by virtue of the operation of the doctrine of issue estoppel.*
4. *THAT this Honourable Court lacks jurisdiction to hear this matter as it became "functus officio" upon delivery of its judgment delivered on 22nd May, 2025 and therefore it cannot determine any issues arising from the judgement as to do so the court will be sitting on appeal on its own decision. The matter could only have been addressed on a review before*

this Honourable Court or on appeal to the Court of Appeal.

5. *THAT the present application as taken out, drawn and filed is frivolous, vexatious, scandalous, incompetent, misconceived, fatally defective, is a blatant abuse of the court process, unsustainable, bad and a nullity in law, merely intended to frustrate the Respondent therefore is of no legal consequence or at all.*

12 The Respondent further filed a replying affidavit dated 21st November 2025 and further affidavit dated 9th December 2025, both sworn by the Arthur Mwangi, its Human Resources Manager.

13 The Respondent avers that the instant application is *res judicata*, as the issues raised therein have been conclusively determined by this Court in its judgment delivered on 22nd May 2025.

14 It is the Respondent's case that this court pronounced itself with finality on the matters in dispute and is therefore *functus officio*, thus, it lacks jurisdiction to reopen, reconsider, or grant fresh reliefs on the same issues.

15 It is the Respondent's position that any party aggrieved by the judgment ought to pursue recourse before the Court of Appeal or apply for review in the proper manner.

16 The Respondent avers that in the judgment of 22nd May 2025, the Court ordered, that the Kshs. 1,000 paid per employee for medical check-ups was refundable, the Respondent having not denied the same. However, the judgment did not declare the payment or deduction of medical check-up fees to be illegal.

17 The Respondent avers that medical examinations are a mandatory statutory requirement for food handlers under the Public Health (Food Hygiene) Regulations and the Food, Drugs and Chemical Substances Act, Cap 254. Therefore, the deductions for medical check-ups are lawful, necessary, and undertaken strictly in compliance with statutory obligations requiring food handlers to possess valid medical certificates confirming their fitness to handle food.

18 The Respondent avers that the Claimant has failed to disclose, identify, or list the specific employees or grievants it purports to represent. No schedule, affidavit, or list of members was produced to demonstrate who is aggrieved or that such employees authorized the Union to act on their behalf. In the absence of such identification, the alleged violations are unsubstantiated and speculative.

19 It is the Respondent's case that Rule 5 of the Employment and Labour Relations Court (Procedure) Rules, 2024 requires a party acting in a representative capacity to clearly identify the persons represented and demonstrate their consent. The Claimant's failure to comply with this mandatory requirement renders the application procedurally defective and devoid of evidentiary foundation.

20 The Respondent further avers that its employees consented to the medical check-up deductions, having been duly informed of the exercise and the related costs in accordance with their terms of engagement and workplace safety standards, and consent forms duly executed by employees were exhibited in support of this position.

21 It is the Respondent's case that no proof has been tendered of any alleged illegal or unauthorized deductions. The Claimant placed no payslips, receipts, or documentary evidence before the Court to demonstrate that any employee suffered an unlawful deduction.

22 The Respondent avers that the issues raised in the application are either *res judicata* or entirely new matters that were not part of the original dispute determined by the Court on 22nd May 2025, and that the Claimant is improperly attempting to reopen a concluded matter and introduce extraneous issues.

23 It is the Respondent's case that it lodged a Notice of Appeal purely as a precautionary measure to preserve its appellate rights within the timelines prescribed under Rule 75 of the Court of Appeal Rules, 2022, while awaiting the determination of its review application. This was done in good faith and did not amount to pursuing parallel remedies, as the review and appeal are founded on distinct legal bases.

24 The Respondent further avers that during the hearing, there was no list of grievants and only one witness testified, and she did so solely on her own behalf. Consequently, if any refund were to arise, it could only relate to that witness, there being no evidential basis for a wider claim affecting unidentified employees.

25 It is the Respondent's case that this Court did not award or direct payment of Kshs. 20,000,000, and that the allegation of such a refund is a completely new issue not arising from the pleadings, evidence, or judgment.

26 The Respondent avers that it is only through a review can the Court clarify the judgment, and maintains that no such award was made.

27 The Respondent avers that the filing of both the review application and the notice of appeal has occasioned no prejudice to the Claimant and does not amount to an

abuse of process, the Respondent having acted transparently and within the bounds of procedural law.

28 It is the Respondent's case that the Claimant's application is incompetent, misconceived, and bad in law, and is intended to unjustifiably execute a sum of Kshs. 20,000,000 which was not awarded by the Court.

29 The Respondent avers that the application ought to be struck out, as urged in the Preliminary Objection, the issues being *res judicata* and this Honourable Court being *functus officio.*

30 It is the Respondent's case that it duly filed a Notice of Appeal dated 30th May 2025, expressly indicating an intention to appeal only that specific part of the judgment in which the Court held that the Kshs. 1,000 paid per employee for medical check-up was refundable on the basis that the Respondent had "not denied the same." The Notice of Appeal is narrowly and expressly limited to this single finding.

31 It is the Respondent's case that the Notice of Appeal does not, either directly or indirectly, challenge or relate to any alleged award or finding concerning Kshs. 20,000,000, as no such order, direction, or computation was made by this Court. The Respondent avers that the entire judgment contains no reference to such a sum, and no list of

grievants, tabulation, or evidentiary basis supporting that figure was ever placed before the Court.

32 The Respondent avers that during the hearing, only one witness testified and did so solely on her own behalf, and no documentary proof was produced to demonstrate deductions in respect of any other employee. Consequently, the refund component addressed in the judgment was confined strictly to the issue of the Kshs. 1,000 medical check-up fee.

33 It is the Respondent's case that its application for review was necessitated solely to seek clarity on whether the judgment made any finding or award in respect of the alleged sum of Kshs. 20,000,000, which the Respondent maintains was never awarded, and further to clarify whether the refundable amount referred to in the judgment was Kshs. 1,000 or Kshs. 100, there having been no documentary proof produced to establish the precise figure.

34 The Respondent avers that the Claimant's attempt to anchor this application on a non-existent order of Kshs. 20,000,000 amounts to a distortion of the Court's judgment, a prohibited introduction of new issues, and an attempt to obtain reliefs that were never granted, thereby rendering the application wholly misconceived.

35 It is the Respondent's case that its Notice of Appeal reinforces its position that the intended appeal is confined to a narrow and specific point of law and fact arising from the judgment and cannot be construed as an admission of liability or as relating to any alleged sum of Kshs. 20,000,000, which is entirely foreign to the judgment and the record.

Interested Party's Case

36 In opposition to the application, the Interested Party filed a replying affidavit dated 28th November 2025 sworn by its Acting General Secretary, Andrew Kinyua M'mukiri.

37 It is the Interested Party's case that following delivery of the judgment dated 22nd May 2025, the Respondent filed an application dated 18th August 2025 seeking orders for stay of execution of the judgment and review of paragraph 78 thereof, specifically the finding that the Kshs. 1,000 paid per employee for medical check-up was refundable, and for substitution of that finding with an order dismissing the claim for refund.

38 The Interested Party avers that the Claimant subsequently filed the application herein seeking injunctive orders restraining the Respondent from making further deductions for medical check-ups and compelling refund of monies allegedly deducted pending determination of the appeal. These prayers are substantially similar to

those sought and determined in the main claim thus granting them would offend Section 7 of the Civil Procedure Act on *res judicata*, the Court having already rendered a final determination and being *functus officio*.

39 It is the Interested Party's case that the Respondent's application for stay and review remains pending determination and that the Claimant's application, if allowed, would render the Respondent's application nugatory. The Interested Party has filed a replying affidavit supporting the Respondent's application and the grounds advanced for stay and review are weighty and merit the Court's exercise of discretion.

40 The Interested Party further avers that no evidence has been placed before the Court to demonstrate that any employee suffered deductions of Kshs. 1,000 nor has any list of affected employees or proof of union membership been provided. Further, only one witness testified in the main cause and did so on her own behalf.

41 It is the Interested Party's case that medical screening and possession of a food handler's certificate are mandatory under the Public Health (Food Hygiene) Regulations for food handlers, including employees engaged in the export of fruits and vegetables classified as foodstuffs under the Food, Drugs and Chemical Substances Act.

42 The Interested Party avers that while an employer is obligated to ensure compliance and maintain records, the Regulations do not impose upon the employer the obligation to meet the cost of screening and certification.

43 The Interested Party avers that any order restraining deductions or compelling refunds would impose additional financial responsibility inconsistent with the statutory framework and would expose the Respondent to irreparable loss, particularly where no evidentiary basis exists and refunds may not be recoverable should the review succeed. Further, the balance of convenience tilts in favour of the Respondent.

Interested Party's Submissions

44 The Interested Party submitted that the application is unsupported by any evidence, there being no material placed before the Court to demonstrate that Kshs. 1,000was deducted from any employee. No list of employees allegedly affected by the deductions has been availed, thereby rendering the allegations unproven.

45 The Interested Party submitted that the Respondent's employees are engaged in the export of vegetables and fruits, which are classified as foodstuffs. Under the Public Health (Food Hygiene) Regulations, all food handlers, including chefs, waiters, food vendors, and any persons

handling food, are required to undergo medical screening and obtain a valid food handler's certificate, which is renewable from time to time.

46 It was submitted that the Claimant has failed to demonstrate that the law places the obligation of paying for medical screening and issuance of the food handler's certificate upon the employer rather than the food handler, who in this case is the employee.

47 The Interested Party submitted that the law merely requires an employer to ensure compliance by confirming that employees possess valid certificates and by maintaining records of health screening, but does not impose a duty on the employer to meet the costs of screening or certification.

48 The Interested Party submitted that any payment made by employees is lawful and where an employer facilitates the process of securing food handler certificates, recovery of the attendant costs is permissible. Therefore, any order restraining the Respondent from complying with or facilitating these statutory obligations would be contrary to the applicable Regulations.

49 On injunctive relief, the Interested Party submitted that the Court's discretion is guided by the well-established principles requiring an applicant to demonstrate a *prima facie* case with a probability of success, irreparable harm

not compensable by damages, and, where doubt exists, that the balance of convenience tilts in the applicant's favour. The Claimant has failed to satisfy any of these principles.

50 The Interested Party further submitted that the names of the sixty (60) employees on whose behalf the claim was allegedly lodged were never placed before the Court. Both the Respondent and the Interested Party have advanced weighty grounds in support of the pending application for review, which may result in correction of errors in the judgment.

51 It was submitted that granting the orders sought by the Claimant would render the Respondent's application for review nugatory and an academic exercise. Compelling a refund of allegedly deducted monies, in the absence of evidence, would expose the Respondent to irreparable loss, particularly if the review application were to succeed and the sums refunded prove irrecoverable.

52 The Interested Party submitted that the balance of convenience tilts in favour of the Respondent and that parties are bound by their pleadings. It thus urged the Court to dismiss the Claimant's application.

53 I have considered the averments and submissions of the parties herein. The applicants seek order to have the respondents stop deducting the kshs 1,000/- medical

checkup fees. They also want the already deducted kshs 1,000/- to be refunded.

54 From the judgment of the court delivered on 22/5/2025 at para 78, the court made a finding that the paid kshs 1,000/- per employee for checkup is refundable.

55 It is therefore apparent that the issue of the kshs 1,000/- medical checkup was determined by this court in the judgment delivered. The order of the court still stands. The only way the applicant can access the kshs 1,000 is through an execution process and not through this application. Retrying this issue will be tantamount to changing the court's judgment which is not tenable as this will amount to sitting on appeal on the judgment delivered.

56 I decline the invitation and dismiss this application accordingly.

Dated, Signed and Delivered Virtually at Nairobi this 25th Day of February, 2026.

HELLEN WASILWA

JUDGE