

REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MACHAKOS  
CONSTITUTIONAL PETITION NO. E008 OF 2025

IN THE MATTER OF ARTICLES 10, 21, 22, 23, 24, 27, 28, 41, 43, 47 AND 165 OF THE CONSTITUTION OF KENYA, 2010 AS READ WITH THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013

AND

IN THE MATTER OF THE LABOUR RELATIONS ACT AND THE COUNTY GOVERNMENTS ACT

BETWEEN

THE COUNTY GOVERNMENT OF MACHAKOS .....PETITIONER

-VERSUS-

THE KENYA NATIONAL UNION OF MEDICAL LABORATORY OFFICERS (KNUMLO).....RESPONDENT

CORAM

*Before Lady Justice J.W. Keli*

*C/A Otieno*

JUDGMENT

Introduction

1. The Petitioner commenced this suit vide a Petition dated 30<sup>th</sup> July 2025 seeking the following orders:-

- a) *A declaration does issue to the effect that the strike notice dated 16th July 2025 issued by the Kenya National Union of Medical Laboratory Officers (KNUMLO), is illegal, null and void and contrary to Articles 10, 21, 27, 28, 41, and 43 of the Constitution of Kenya, 2010 as read with Section 81 of the Labour Relations Act.*
- b) *A declaration does issue to the effect that any industrial action pursuant to the Strike Notice dated 16th July 2025 by the Kenya National Union of Medical Laboratory Officers (KNUMLO), their members, employees, agents, assigns, or any persons acting on their own behalf and interest is illegal and unconstitutional and contrary to Articles 10, 21, 27, 28, 41, and 43 of the Constitution of Kenya, 2010 and a threat and violation to the right to healthcare and provision of healthcare services thus contrary to Articles 25 of the Universal Declaration of Human Rights, 1948; Article 24 of the Convention on the Rights of the Child; Article 12 of the International Covenant on Civil and Political Rights; and Article 16 of the African Charter on Peoples and Human Rights.*
- c) *A declaration does issue to the effect that any industrial action pursuant to the Strike Notice dated 16th July 2025 by the Kenya National Union of Medical Laboratory Officers (KNUMLO), its members, employees, agents, assigns, or any persons acting on their own behalf and interest is illegal and an abdication and dereliction of duties hence warranting disciplinary action.*
- d) *A permanent injunction does issue prohibiting the Kenya National Union of Medical Laboratory Officers (KNUMLO), the Respondent herein, its members, employees, agents, servants, assigns and/or anybody else claiming under them from interfering with the smooth running of health services at the County Government of Machakos.*

- e) *An order does issue to the effect that any employee and member of the Kenya National Union of Medical Laboratory Officers (KNUMLO), who took part in the illegal strike is not entitled to any such payment and/or emoluments and/or salaries and/or benefits during the said period as a result of absconding their duties.*
- f) *An order awarding costs of the Petition to the Petitioner.*
- g) *Any other or further orders, writs and directions this court considers appropriate and just to grant for the purpose of the enforcement of the petitioners fundamental rights and freedoms.*

2. The Petition was filed alongside the Supporting Affidavit of JUSTUS KASIVU sworn on 30<sup>th</sup> July 2025, and annexures thereto. The Petitioner later filed an Affidavit annexing Conciliator's Report, sworn by the same deponent on 19<sup>th</sup> September 2025.
3. In response to the said Petition, the Respondent filed a Replying Affidavit sworn by PIUS NYAKUNDI on 6<sup>th</sup> January 2026.

The Petitioner's case in summary

4. The Petitioner's case is that the Respondent issued a strike notice dated 16th July 2025 threatening that its members would down their tools in respect of the provision of healthcare and related services to the County Government of Machakos. The strike notice took effect on the 30th July 2025, leading to the Respondent's members downing their tools of service,

thereby gravely affecting the health and well-being of patients seeking treatment within the Machakos health facilities run by the County Government of Machakos, and paralyzing the provision of healthcare services to the people of Machakos County. The Petitioner states that the strike went ahead despite the Petitioner making frantic efforts to address the Respondent's issues and demands.

5. The Petitioner complains that the Respondent has issued unreasonable, illegal and unconstitutional demands whose effect is to paralyze the provision of healthcare services to members of the public in Machakos County and to jeopardize and compromise the right to health and healthcare services as enshrined under Article 43 of the Constitution of Kenya, 2010 as read with various other international and regional laws on the right to health. The Petitioner is emphatic that it has consistently demonstrated a willingness to engage in negotiations with the Respondent and its members in regard to the issues raised in the strike notice, and negotiations between the parties are ongoing. It states that it is committed to resolving the matters in dispute through dialogue, and the Respondents' decision to proceed with industrial action, despite these ongoing efforts, is unjustified and undermines the negotiation process. In particular, the Petitioner avers that it has been making diligent efforts to ensure the timely payment of salaries for its employees, including the Respondent's members, but delays have arisen due to late disbursements of funds from the National Treasury to the County Governments, a widely recognized public concern. They argue that the delays in salary payments are not unique to the members of the Respondents; they affect all employees within the County Public Service.

6. The Petitioner classifies the strike by members of the Respondent, who are medical laboratory officers, as unlawful and unprotected.
  
7. The Petitioner avers that the Respondent and its members are essential service providers whose right to go on strike is limited pursuant to Article 24 of the Constitution and it is therefore illegal for them to purport to go on strike. They rely on the cases of COUNTY GOVERNMENT OF KISII VS KENYA MEDICAL PRACTITIONERS PHARMACISTS & DENTISTS UNION (KMPDU) & ANOTHER (CAUSE E016 OF 2024) [2024] KEELRC 561 (KLR) (14 MARCH 2024) (RULING) and SETH PANYAKO & 5 OTHERS VS ATTORNEY GENERAL & 2 OTHERS [2013] EKLR for this position. Further, they state that the Respondent's decision to call for a strike is in violation of Part X of the Labour Relations Act, which outlines dispute resolution mechanisms, and they have specifically violated Sections 76 and 77 of the Labour Relations Act by proceeding with the strike while the trade dispute has not been subjected to conciliation.
  
8. In addition to the above, the Petitioner argues that the Respondent and its members are in violation of Articles 10, 27, 28, 41, and 43 of the Constitution. In respect of Article 27, they explain that the Respondent's actions are discriminatory as the Petitioner is being discriminated against on the basis of its status and occupation among others, as compared to other Government institutions and State Organs. They also cite contravention of Article 25 of the Universal Declaration of Human Rights, 1948; Article 24 of the Convention on the

Rights of the Child; Article 12 of the International Covenant on Civil and Political Rights; and Article 16 of the African Charter on Peoples and Human Rights, all of which provide for the right to enjoy the best attainable state of physical and mental health and healthcare related services. They aver that by their conduct, the Respondent has failed to uphold the dictates of Article 21 of the Constitution of Kenya, 2010 which requires the State and every State organ to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights.

Respondent's case in brief

9. The Respondent states that it is a registered trade union Respondent holding a Recognition Agreement entered into with the Petitioner which gives it the locus standi to act on behalf of all Medical Laboratory Officers who are in the service of the County Public Service Board of the Petitioner herein. They admit that the Petitioner and the Respondent participated in various meetings on the dispute herein but have filed this suit in a bid to delay the resolution of the dispute. According to the Respondent, its members' have a legitimate expectation for re-designations, promotions and fairness in employment pursuant to the provisions of the Public Service Commission Human Resource Manual, 2016 and the same should be fully implemented by the Petitioner.

10. It is the Respondent's case that matters on job groups and promotions are clearly provided for in the Human Resource Policies and Procedures Manual for the Public Service May, 2016, specifically in Sections 8.25, B.26, B.27, 8.28 which state as follows:

*"PROMOTIONS B.25*

*(1) Promotions in the public service will be based on qualifications and other requirements for appointment as stipulated in the career progression guidelines.*

*(2) In selecting candidates for promotion, regard shall be given to affording adequate and equal opportunities to all gender, youth. members of all ethnic groups, persons with disabilities and minorities. Promotions dependent on examinations*

*B.26(1) Where an officer is to be promoted upon satisfying requirements which include the passing of relevant Commissions examinations, the officer shall be promoted with effect from the date he or she passed the examination.*

*(2) The date of passing the examination is the date of release of results by the Commission.*

*Promotion to posts in common establishment*

*B.27 Promotion to posts within a common establishment shall cover the first two (2) grades at entry level or as determined by the Commission from time to time. Dates of Promotion*

*8.28 (1) The effective date of an officer's promotion will be the date of the Public Service Commission decision or date of the MHRMAC meeting.*

*(2) Promotion within common establishment posts shall be effective from the date the officer qualifies."*

11. In line with the PSC Human Resource Policy and Management of 2016 for the Public Service, matters pertaining to promotions and re-designations motions are to be conducted as herein below:-

*“8.21 (1) The Authorized Officer shall have power to re-designate officers from Job Group 'A' to 'H' upon recommendation of MHRMAC subject to suitability interview for those moving to non-related cadres.*

*(2) Re-designation of staff in Job Group 'J' and above shall remain the responsibility of the Public Service Commission.*

*(3) Re-designation of officers shall be subject to the following conditions:*

*(i) Suitability interview for officers who are moving from one cadre to another;*

*(ii) Suitability Interview shall not apply for posts which fall within the same job family;*

*(iii) Shall be limited to positions in the first two (2) entry levels in any cadre;*

*(iv) Shall take effect from the date of the decision;*

*(v) Authorized Officers shall be required to promote qualified officers before processing the re-designation requests;*

*(vi) Re-designation with continuous service will be allowed only for technical cadres whose job specifications are similar for both graduate and non-graduate officers; and*

*(vii) Shall be subject to existence of vacancies.”*

*(4) The above notwithstanding re-designations will be based on an officers' competence, merit and ability in performance.”*

12. The Respondent invokes the Constitutional right to equality before the law and the right to fair remuneration, and the right under the Employment Act 2007 requires every employer to ensure that men and women workers are paid equally for work of equal value. The Respondent invoked the relevant provisions of the Recognition Agreement signed on 25th November 2024 in its several attempts to resolve the collective claims/grievances, hence the Petitioners cannot act surprised and fault the members of the respondent in their participation in an industrial action per their rights under Article 41 of the Constitution which gives life to the mandatory provisions of Section 76 of the Labour Relations Act.

13. It is the Respondent's argument that it is absurd for the Petitioners to argue that Respondents' actions are in violation of the public's rights and interest without considering the inalienable rights and interests of its employees who are practically forced to stare death in the eye and play Russian roulette due to dangerous work conditions, lack of basic tools of trade, inability to meet basic needs and are demoralized and disillusioned. They state that the protection of the sanctity of life can only be achieved through a motivated and focused workforce.

14. The Respondent agree that issues relating to re-designations and promotions simply require the goodwill and action of the Applicant without prodding or compulsion through an industrial action. They caution that the fact that the Respondents' members provide essential services cannot be used as a shield by the Petitioner who has completely failed to discharge its duties under the same laws.
15. By way of explanation, the Respondent states that its members started holding negotiation meetings and entering agreements with the current regime of the Petitioner even before they assumed office. To illustrate the foregoing, they disclose that they signed an agreement/memorandum charter titled Machakos County Health Care System Charter, 2022 dated 3rd August 2022 through which the political leadership of the County undertook to:
- a. Put in place measures that would ensure self-sustaining funding and financing for the health sector including ensuring adequate budgetary allocation for healthcare, devising measures to generate more revenue from the facilities and sealing loopholes to ensure that all resources can be tracked, ensure effective funding of all levels of care, setting a Sub County Health systems Budget, Setting up an annual fund for infrastructural improvement of health facilities, setting up a research fund research to foster research within the health sector to help in making evidence based decisions and contribute to global knowledge and ring fencing health sector generated funds to be budgeted and utilized at the point of generation.

- b. Promote and re-designate all health workers who are due for promotion and have them upgraded.
- c. Allow programmed and uninterrupted career development coupled with respective re-designation as stipulated by respective Schemes of service.
- d. Honour all Signed CBAs and Scheme of Services for respective health workforce.
- e. Champion for conclusion, registration and implementation of all pending CBAs.
- f. Provide comprehensive health insurance covers for healthcare workers.

16. After assuming office, the Governor requested for one year to implement the agreement, but in June 2023 after the unions realized the government was non-committal on the issues agreed, they issued a joint strike notice dated 26th June 2023 and the issues raised therein were: -

- (a) Promotions
- (b) Staff shortages
- (c) Inadequate hospital supplies

17. After issuance of the subject strike notice, the Petitioner convened a meeting with all unions on 13th July 2023 and entered into an agreement dubbed "Agreement between the County government of Machakos and Health Union Officials". In the agreement the Petitioner agreed to promote 422 healthcare workers (Report 1), which was done but Part 4 of the agreement was not honoured until recently in August 2024 when the Petitioner started paying the arrears for the 422 officers albeit in tranches of 20% every month, a process, they committed to continue Until December 2024. Part 7 of the agreement stated that an implementation framework for phase 2 which involves 1267 Healthcare Workers who were due for promotions then was to be agreed upon by 13th January 2024. The Petitioner, at Part 8 of the same agreement, committed to ensure that going forward, workers who are due for promotions are neither disadvantaged nor discriminated upon.

18. When the Petitioner failed to implement the above set out agreement despite several follow-up meetings, the Respondent issued a second strike notice on 2<sup>nd</sup> February 2024 to compel the employer to implement the previous agreements and thereby ensure promotions among other grievances. In response to the strike notice, the County convened yet another meeting on 23rd February 2024 and entered into another agreement dubbed 'Agreement between the county Government of Machakos and Health Workers Union Officers dated 23rd Feb 2024.'

19. In this latest agreement the Petitioner committed to start processing phase 2 of promotions, and issue promotion letters to the affected officers no later than 5th June 2024. In respect of

the comprehensive medical cover, the Petitioner undertook to review the beneficiaries' package, start members' sensitization and carry out proper public participation with an assurance that they would engage the union at the appropriate time. All the mentioned agreements and commitments by the Petitioner were not honoured.

20. The Respondent states that since June 2024 the Respondent made efforts to contact the Petitioner for further discussions in vain. They therefore had no option but to issue the subject strike notice on 26<sup>th</sup> September 2024, particularizing the same issues that the Petitioner had committed to from 2022, namely, promotions and re-designations.

21. The Respondents counter-argue that the Petitioner has breached or are threatening to breach the constitutional rights of the members of the Respondent who are in their employment as follows: right to fair labour practices under Article 41 of the Constitution by unfairly refusing and/or failing to effect promotions and re-designations as provided for in the Public Service Commission Human Resource Manual, 2016; their legitimate expectation for re-designations, promotions and fairness in employment pursuant to the Public Service Commission Human Resource Manual, 2016 which donates responsibility for full implementation to the Petitioner; and their right to fair administrative action under Article 47 of the Constitution by failing to honour their undertakings in various agreements in respect of promotions and re-designations.

22. The Respondent challenges the present suit for being premature by dint of Article 159 of the Constitution which promotes Alternative Dispute Resolution Mechanisms; Section 62(1) (a) and (b) of the Labour Relations Act which recommends Conciliation as the preferred mode of dispute resolution; and Clause L.4 of the Public Service Commission Human Resource Policies, 2016 which states that should a trade dispute arise concerning any aspect of the employer/employee relationship arise, the resolution of that dispute will be as provided for in the Labour Relations Act.

23. Finally, the Respondent decries the perceived attempts of the Petitioner to take away the role given to County Public Service Boards under Section 59(1) of the County Government Act Laws of Kenya to among other functions facilitate the development of coherent, integrated human resource planning and budgeting for personal emoluments in counties and also to advise the County Government on human resource management and development.

#### DETERMINATION

24. Following directions by the court that parties should file written submissions, both parties complied.

#### Issues for determination

25. In their submissions dated 8<sup>th</sup> August 2025, the Petitioner identified one issue for determination, namely, whether the Petitioner has made out a case to warrant the grant of the Orders sought.

26. In their submissions dated 6<sup>th</sup> January 2026, the Respondent identified the following issues for determination:

- i. Whether the members of the Respondent are entitled to go on strike under Article 41 of the Constitution subject to retention of 'Minimum service' at the affected facilities.
- ii. Whether the members of the Respondent are entitled to promotions, re-designations and does the same creates legitimate expectation to the members of the union and whether such legitimate expectation is enforceable.
- iii. What orders should issue in the circumstances of the case.

27. The court at the outset, on the 31<sup>st</sup> July 2025, issued the following interim orders-

- a. THAT pending the inter-partes hearing and determination of the instant Application, the Honourable Court is pleased to issue conservatory order suspending the Strike Notice dated 16th JULY 2025 issued by the KENYA NATIONAL UNION OF MEDICAL LABARATORY OFFICERS (KNUMLO), the Respondent herein, and to prohibit the Respondent either by itself, members, or any person claiming from it, and/or its agents

from absconding duties and provision of healthcare and related services to the County Government of Machakos.

b. That the Court does issue an order compelling the parties to attempt an out of court settlement and to enter and conclude negotiations over the ongoing strike. The Cabinet Secretary in charge of Labour affairs do appoint a conciliator under the Labour Relations Act to resolve the trade dispute between the parties.

27. The parties proceeded on conciliation as ordered and filed a consent signed by representatives of the parties and dated 6<sup>th</sup> November 2025 as follows- 'CONSENT

*Pursuant to the Court Orders of 15TH OCTOBER, 2025 BY LADY JUSTICE JEMIMAH WANZA KELI*

*WHEREAS the parties have engaged in various negotiations pursuant to the Court orders herein AND WHEREAS the parties have held discussions in good faith NOW BY CONSENT of all the parties, it is hereby agreed as follows:*

*(1) Chronic Stockouts of Laboratory Commodities and Reagents*

*THAT, subject to the ongoing operationalization of the Facilities Improvement Financing Act which required gazette of hospital boards and health facility management committees. There is progress in this whereby the level 4 and level 5 hospitals boards have been gazetted. The health facility management committees are expected to be gazette in the course of the financial year.*

*(2) Acute Staffing Shortages in Laboratory Services*

*THAT, on acute staffing shortage in the Laboratory Services, parties agreed that the process is on-going for 8 officers which is expected to be completed by end of November. Further Quarterly replacement was agreed on for exiting staff.*

*[6:54 PM, 3/12/2026] Lady Justice Keli, FCI Arb: 3) Delayed or Non-remittance of Statutory Deductions*

*THAT, the May, June and July arrears have been paid as agreed. It was acknowledged that this is depended on exchequer flow. However, progress has been made so far and the County Government is in the process of negotiating with the commereal banks to be paying the gross salaries instead of net salaries so that the statutory deductions are remitted with payment of salaries.*

*(4) Laboratory Directorate*

*THAT, the Health Department has submitted a staff establishment to the Public Service Board for approval where the position has been created. An advert is expected to be made upon approval of the staff establishment and this is a matter pending before the County Public Service Board. Both parties agreed to give this matter up until 31 January, 2026 for the establishment of the Laboratory Directorate with a substantive director.*

*(5) Staff Training*

*THAT, the Officers who are due for promotion and who have not acquired the requisite training would be exempted of the requirement during promotional interviews. Both parties to come up with a criterion for handling the issue of staff training by 21<sup>st</sup> November, 2025.*

*(6) Unfair and Discriminatory Promotion Practices*

*THAT, the matter remained unresolved as both parties differed on their proposals.*

*(7) THAT, this Consent be and is hereby adopted as orders of this Honourable Court and shall be binding on all parties herein.*

*(8) THAT, in case of non-compliance, an aggrieved party is at liberty to apply.*

*DATED at NAIROBI this 6<sup>th</sup> ...day of .....NOVEMBER... 2025..''.*

28. The conciliator submitted a report dated the same day on the unresolved issue raised by the union, which involved 'unfair discrimination and discriminatory practices.' The union informed the conciliator, as stated in the report, that both the scheme of service and the Human Resource Policy and Procedure Manual for medical laboratory officers provide for automatic promotion after 3 years of service. They also noted that more than 107 medical laboratory officers are currently due for promotion, meaning officers who have served more than 3 years since their last promotion.

29. The court taking into account the foregoing, discerned the outstanding issues for determination were -

A. Whether the Petitioner has made out a case to warrant the grant of the Orders sought.

- B. Whether the members of the Respondent are entitled to promotions, re-designation, and whether the same creates a legitimate expectation in the members of the union, and whether such legitimate expectation is enforceable.

Whether the Petitioner has made out a case to warrant the grant of the Orders sought.

30. The petitioner sought the following orders in the petition.

- a) *A declaration does issue to the effect that the strike notice dated 16<sup>th</sup> July 2025 issued by the Kenya National Union of Medical Laboratory Officers (KNUMLO), is illegal, null and void and contrary to Articles 10, 21, 27, 28, 41, and 43 of the Constitution of Kenya, 2010 as read with Section 81 of the Labour Relations Act.*
- b) *A declaration does issue to the effect that any industrial action pursuant to the Strike Notice dated 16<sup>th</sup> July 2025 by the Kenya National Union of Medical Laboratory Officers (KNUMLO), their members, employees, agents, assigns, or any persons acting on their own behalf and interest is illegal and unconstitutional and contrary to Articles 10, 21, 27, 28, 41, and 43 of the Constitution of Kenya, 2010 and a threat and violation to the right to healthcare and provision of healthcare services thus contrary to Articles 25 of the Universal Declaration of Human Rights, 1948; Article 24 of the Convention on the Rights*

*of the Child; Article 12 of the International Covenant on Civil and Political Rights; and Article 16 of the African Charter on Peoples and Human Rights.*

- c) A declaration does issue to the effect that any industrial action pursuant to the Strike Notice dated 16<sup>th</sup> July 2025 by the Kenya National Union of Medical Laboratory Officers (KNUMLO), its members, employees, agents, assigns, or any persons acting on their own behalf and interest is illegal and an abdication and dereliction of duties hence warranting disciplinary action.*
- d) A permanent injunction does issue prohibiting the Kenya National Union of Medical Laboratory Officers (KNUMLO), the Respondent herein, its members, employees, agents, servants, assigns and/or anybody else claiming under them from interfering with the smooth running of health services at the County Government of Machakos.*
- e) An order does issue to the effect that any employee and member of the Kenya National Union of Medical Laboratory Officers (KNUMLO), who took part in the illegal strike is not entitled to any such payment and/or emoluments and/or salaries and/or benefits during the said period as a result of absconding their duties.*
- f) An order awarding costs of the Petition to the Petitioner.*
- g) Any other or further orders, writs and directions this court considers appropriate and just to grant for the purpose of the enforcement of the petitioners fundamental rights and freedoms.*

Petitioner's submissions

31. The Applicant/Petitioner submits that the instant Application meets the threshold in regard to the grant of interim conservatory and injunctive orders. In that regard, the principles in regard to the grant of Conservatory Orders have been outlined by the Courts in various cases and as pointed out by SUPREME COURT JUSTICE ISAAC LENAOLA and ARNOLD OCHIENG in the Book, CONSTITUTIONAL LAW, DOCTRINES AND THE LITIGATION OF FUNDAMENTAL RIGHTS AND FREEDOMS, (LAWAFRICA, NAIROBI, 2023) at pages 104-107 where the authors note thus: “In constitutional litigation, the courts have adopted various principles to be considered before the grant of these orders. They have recognized that such orders are firstly, discretionary in nature; it has been acknowledged that the court in the exercise of the discretion must act cautiously and with Page 3 of 4 a great degree of care but still with reasonableness or flexibility and fairness to promote the enhancement and enforcement of fundamental rights and freedoms of the individual and the public at large, where appropriate; arguable case – a prima facie case as already alluded to here; such a prima facie case, however, has been stated not to mean that it is debatable. To have an arguable case, it has been said that it is one that raises serious if not fundamental and/or substantial issues or questions that ought to be given a reasonable or fair chance to be heard, articulated and ventilated in a court of law.....the third consideration is that a court must pose the question on whether an application or case will be rendered nugatory if the conservatory order is not granted... additionally, the courts have propounded another principle which is that of a balance of convenience. Here, the court is to weigh the various competing interests between the applicant and the respondent in order to strike a proper balance that the justice of the case demands. Where public interests are involved, the

threshold is even higher as the applicant must satisfy the court that individual private interest outweighs public interest.” In regard to health and essential workers strikes, the Courts have been consistent in holding such strikes as illegal and unconstitutional and in *THE COUNCIL OF COUNTY GOVERNORS VS KENYA MEDICAL PRACTITIONERS PHARMACISTS AND DENTISTS UNION & 10 OTHERS* [2017] eKLR the Court suspended the Notice while in subsequent decisions the Courts have quashed such notices holding them to be illegal. The principles in regard to the grant of conservatory and/or interim Orders are well settled. The Supreme Court in the case of *GATIRAU PETER MUNYA VS DICKSON MWENDA KITHINJI & 2 OTHERS*, SUPREME COURT APPLICATION NO. 5 OF 2014, [2014] eKLR rendered itself as follows: - “[86] Conservatory orders” bear a more decided public-law connotation: for these are orders to facilitate ordered functioning within public agencies, as well as to uphold the adjudicatory authority of the Court, in the public interest. Conservatory orders, therefore, are not, unlike interlocutory injunctions, linked to such private-party issues as “the prospects of irreparable harm” occurring during the pendency of a case; or “high probability of success” in the supplicant’s case for orders of stay. Conservatory orders, consequently, should be granted on the inherent merit of a case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes. It follows therefore that the Court ought to consider the inherent merit of a case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes. An Application for Conservatory Orders such as the present ones must therefore be considered on their inherent merits while taking into account all such relevant existing

circumstances and more so, the constitutional principles and values. Additionally, for the Court to grant any such conservatory Orders under Article 23 of the Constitution of Kenya, 2010, an Applicant must satisfy the following: a) The need for the applicant to demonstrate an arguable prima facie case with a likelihood of success, and to show that in the absence of the conservatory orders, he is likely to suffer prejudice. b) The second principle is whether the grant or denial of the conservatory relief will enhance the constitutional values and objects of a specific right or freedom in the Bill of Rights. c) Thirdly, the Court should consider whether, if an interim conservatory order is not granted, the petition or its substratum will be rendered nugatory. d) Whether the public interest will be served or prejudiced by a decision to exercise discretion to grant or deny a conservatory order.

Applying the foregoing to the instant case, on WHETHER THE APPLICANT HAS ESTABLISHED A PRIMA FACIE CASE, we submit that the Applicant has made out a prima facie case as the Court will note thus the strike in question is illegal and unconstitutional as the Respondents are essential workers hence their right to go on strike is limited by law under the Labour Relations Act. the Respondents' decision to call for a strike is in violation of Part X of the Labour Relations Act, which outlines dispute resolution mechanisms. By proceeding with the strike while the trade dispute remains unresolved through conciliation, the Respondents have disregarded Sections 76 and 77 of the Labour Relations Act, which clearly stipulate the lawful processes for addressing industrial disputes. Their actions demonstrate a blatant refusal to follow the proper legal channels for dispute resolution. The Respondents' members are essential service providers whose right to go on strike is limited pursuant to Article 24 of the Constitution of Kenya, 2010 and thus it is illegal

for the Respondents to purport to go on strike and jeopardize essential healthcare services. The Court in the case of COUNTY GOVERNMENT OF KISII VS KENYA MEDICAL PRACTITIONERS PHARMACISTS & DENTISTS UNION (KMPDU) & ANOTHER (CAUSE E016 OF 2024) [2024] KEELRC 561 (KLR) (14 MARCH 2024) (RULING) held thus: “[24] In my view, the prohibition of strikes in an important sector such as the health sector, is reasonable and justifiable, as to allow strikes would have the effect of prejudicing the rights and fundamental freedoms of the general public. [25] Further, the right to strike guaranteed under Section 41(2)(d) of the Constitution is not an absolute right. I therefore return that Section 81 of the Labour Relations Act, which prohibits strikes in essential services, meets the threshold set under Article 24 of the Constitution on limitation of rights and fundamental freedoms, and amounts to a reasonable limitation to the right to strike and does not in any way conflict with Article 41. (See No. 70 of 2014, Okiya Omtatah Okoiti vs The Attorney General) [26] In the upshot, I find and hold that the Respondents strike is prohibited and thus unlawful, and make orders as follows: a. That pending the hearing and determination of the claim herein, the Respondents and/or their officials, agents or servants, assigns and/or anybody else claiming under them, are hereby ordered to immediately call off the ongoing strike, picketing or industrial action by their members declared on 4 th March, 2024. b. That members of the Respondents’ Unions are hereby ordered to report back to work with immediate effect.” The Courts have been consistent on the holding that it is illegal to go on strike in essential services as was affirmed over ten years ago by the Court in the case of SETH PANYAKO & 5 OTHERS VS ATTORNEY GENERAL & 2 OTHERS [2013] ECLR where the Court pointed out thus: It should be remembered that procedural

requirements regulating the right of workers to go on strike action and Employer to declare a lock-out abound in most jurisdictions world over and for good reason. Strikes are a legitimate bargain weapon at the disposal of workers, and should be used sparingly as a last resort measure. For this reason, Section 79(1) of the Labour Relations Act provides for protected strike and protected lock-out which means a strike or lock-out that complies with the provisions of part X of the Act. Protected strike actions do not therefore amount to breach of employment contracts unlike the illegal ones that attract consequences such as disciplinary action and non-payment of remuneration for the period not worked. Section 81(1) defines; “essential services” 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”. The Ministry of Labour in consultation with the National Labour Board has listed the Health Services that include Nursing Services as essential services and Section 81(3) provides; “There shall be no strike or lock-out in an essential service”. Whereas Section 81(4) provides; “Any trade dispute in a service that is listed as or is declared to be an essential service may be adjudicated upon by the Industrial Court.” These two provisions are as clear as daylight and are meant to protect “life of a person or health of the population or any part of the population”. These provisions meet the criteria provided under Article 24(1) of the Constitution in ensuring that the enjoyment of rights and fundamental freedoms by any individuals does not prejudice the rights and fundamental freedoms of others. The law has gone further to ameliorate the effects of the restriction by providing for a direct adjudication of disputes involving essential services by the court and in any event by way of Certificate of Urgency where necessary. The legislation is specific and clear about the right to be limited, that is, the right to go on strike

by the essential service and the limitation is restricted to defined category of workers. The said limitation does not derogate from the core or essential content which is to provide an effective means to guarantee fair and just terms of employment to majority of workers with certain exceptions in the category of essential service, a limited group whose terms are secured through collective bargaining, dispute resolution mechanism provided in the Act, and especially adjudication by the Industrial Court on a priority basis. Accordingly, the court; (a) Directs the Registrar of Trade Unions to register the KENYA NATIONAL UNION OF NURSES and issue it with a Certificate of Registration in Form B set out in Second Schedule to the Labour Relations Act No.14 of 2007 within 14 days from to date. (b) Declares that it is unlawful to hold a strike Action or Lock-out in an essential service. (c) That each party bears its own cost of this suit.” Similarly, in the case of COUNTY GOVERNMENT OF MERU VS KENYA MEDICAL PRACTITIONERS, PHARMACISTS AND DENTISTS UNION; KENYA UNION OF CLINICAL OFFICERS AND OTHERS; EMPLOYMENT AND LABOUR RELATIONS COURT MERU CONSTITUTIONAL PETITION NO. E004 OF 2024, the Court, while declaring a similar strike illegal, held as follows: “[67] The right to go on strike is not one of the absolute rights listed under Article 25 of the Constitution. In fact, with respect to essential services, the right to go on strike has been taken away altogether in Kenya. Section 81 of the Labour Relations Act provides that: - (1) In this part ‘essential services’ means 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. (2) ... (3) There shall be no strike or lock-out in an essential service. (4) ...” [68] This court has dealt with several cases where the right to go on strike by workers in health sector has been raised. In the said cases,

the court has agreed that the right to go on strike is not absolute and therefore it can be limited under Article 24 above. However, there seems Page 9 of 112 10 to be no case where the court has determined whether or not the provisions of section 81 (3) of the Labour Relations Act is unconstitutional. The Court has also not been invited to make such a determination. [69] ... [77] Consequently, I find that the law as it is in Kenya, is that the right to go on strike in essential services for public service is prohibited under section 81 of the Labour Relations Act, 2007 until that law is repealed or otherwise changed to provide for a balance between the right to go on strike under Article 41 (2) (d) of the Constitution and the right to life; right to be treated with dignity; and right to the highest standard of health under Articles 26, 28, and 43 of the Constitution of Kenya, 2010. The said balance is only possible if the law or CBAs or HR Policy Manuals are formulated to provide for “Minimum service’ in essential services sector during the period of strike. [78] Having said that, and in view of the undisputed fact that the respondents have called a strike in essential service contrary to section 81 (3) of the Labour Relations Act without guaranteeing minimum service, I find and hold that the strike has violated and continues to violate Article 26, 28 and 43 (1) (a) of the Constitution which form part of the Bill of Rights as alleged.” It follows therefore that the Applicant/Petitioner has established a prima facie case to warrant the grant of the orders sought herein. The Court will note that despite the various attempts and efforts by the County Government of Machakos [SEE PAGES 25 TO 46 Page 10 of 112 11 OF THE NOTICE OF MOTION APPLICATION BUNDLE], the Respondents are hell-bent on frustrating service delivery and healthcare service provision by the County Government of Machakos to the detriment of the people of Machakos and in violation of Articles 10, 27, 28, 41, and 43 of the

Constitution of Kenya, 2010 and Articles 25 of the Universal Declaration of Human Rights, 1948; Article 24 of the Convention on the Rights of the Child; Article 12 of the International Covenant on Civil and Political Rights; and Article 16 of the African Charter on Peoples and Human Rights, which all provide for the right to enjoy the best attainable state of physical and mental health and healthcare related services. In the circumstances, the Applicant submits that it has made out a case to warrant the grant of the orders sought herein.

32. On the limbs of WHETHER THE PETITION WILL BE RENDERED NUGATORY and WHETHER PUBLIC INTEREST LIES IN FAVOUR OF THE ISSUANCE OF CONSERVATORY ORDERS, we submit that the instant Petition shall be rendered nugatory and in fact public interest lies in favour of the grant of the conservatory orders as the County affairs and provisions of healthcare and related services shall be paralyzed. 15. The Respondents' members have ceased their duties, effectively shutting down hospital and maternity services across the County. This work stoppage has and shall lead to an imminent crisis in essential healthcare operations, further endangering the health and wellbeing of residents who rely on these critical services. As a result, public interest lies in favour of the grant of the orders sought for the greater benefit of the members of the public.

#### Respondent's submissions

33. The Right to go on strike - The question as to whether health sector workers can go on strike in light of the provisions of Section 81 of the Labour Relations Act has come up for consideration in a number of decided cases in Kenya. These include the decision by Hon

Justice Nduma Nderi in *Okiya Omtatah Okoiti v Attorney General & 5 others* (2015) and a 3 Judge Bench (Mbaru, Abuodha and Ndolo JJ) decision in *Joseph Otieno Oluoch v KPMDU* (2021) eKLR. These two cases were significantly mentioned and relied on by the Court in *County Government of Meru v Kenya Medical Practitioners Pharmacists and Dentists Union & 2 others: Meru County Public Service Board & 2 others (Interested Parties)* (Constitutional Petition E004 of 2024) [2024] KEELRC 2449 which the County Government and the Board have placed much emphasis on in this matter. From these decided cases, the emerging jurisprudence is that the provision of Section 81 of the Labour Relations Act ought not to be read in isolation. The Courts in Kenya have come to accept international best standards which balance the essentiality of health workers and their corresponding constitutional right to go on strike under Article 41. Page 2 of 17 proceedings. Needless to say the current strike notice was based on the very same issues that the county had committed to from 2022 and in the subsequent agreements which the County signed whenever the Respondent took steps to enforce the agreements by way of industrial action.

### Decision

34. The court has determined the issue of right to strike in the health sector in various cases as cited by the petitioner. The Constitution of Kenya, 2010 Article 36 provides that: -

*“Freedom of association (1) Every person has the right to freedom of association, which includes the right to form, join or participate in the activities of an association of any kind. (2) A person shall not be compelled to join an association of any kind. (3) Any legislation that requires registration of an association of any kind shall provide that— (a) registration may not be*

*withheld or withdrawn unreasonably; and (b) there shall be a right to have a fair hearing before a registration is cancelled.” Article 41 provides that: -*

*“(1) Every person has the right to fair labour practices.*

*(2) Every worker has the right--*

*(a) to fair remuneration;*

*(b) to reasonable working conditions;*

*(c) to form, join or participate in the activities and programmes of a trade union; and*

*(d) to go on strike.*

*(3) Every employer has the right--*

*(a) to form and join an employers’ organisation; and*

*(b) to participate in the activities and programmes of an employers’ organisation.*

*(4) Every trade union and every employers’ organisation has the right--*

*(a) to determine its own administration, programmes and activities;*

*b) to organise; and*

(c) to form and join a federation.’’ The right to strike is not an absolute right under Article 25 of the Constitution to wit – ‘**25. Fundamental Rights and freedoms that may not be limited**

Despite any other provision in this Constitution, the following rights and fundamental freedoms shall not be limited—

- (a) freedom from torture and cruel, inhuman or degrading treatment or punishment;
- (b) freedom from slavery or servitude;
- (c) the right to a fair trial; and
- (d) the right to an order of *habeas corpus*.’’

35. The respondent’s members are in health sector which is essential service. The Labour Relations Act, 2007 limits the right to strike in essential service as follows- Section 81 : A strike or lockout cannot be for essential services.

Water supply services.

Hospital services.

Air Traffic Control Services and Civil Aviation Telecommunication Services.

Fire Services of the government or Public Institutions.

Post Authorities and Local Government Authorities.

Ferry services.’’ The Constitution of Kenya, 2010 set the parameters for limitation of bill of rights, save for the absolute rights stated in article 25 as follows- ‘(1) A right or fundamental freedom in the Bill of Rights shall not be limited except

by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including—

- (a) the nature of the right or fundamental freedom;
- (b) the importance of the purpose of the limitation;
- (c) the nature and extent of the limitation;
- (d) the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and
- (e) the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.”

The court in *Okiya Omtatah Okoiti v The Attorney General & 5 others* [2015] eKLR Nduma J held that Sections 78 and 81 of the Labour Relations Act, whose effect is to prohibit workers employed in essential services from going on strike derogate from the core content of the right to strike as provided under Article 41(2)(d). In a subsequent decision by 3 Judge Bench (Mbaru J, Abuodha J and Ndolo J) in *Joseph Otieno Oruoch v Kenya Medical Practitioners Pharmacists & Dentists Union & another* [2021] eKLR a different position was taken. The Bench noted the above 2 decisions and looked into international law. Most relevant being the ILO standards. The Bench noted the position of the International Labour Organisation (ILO) as contained in the Digest of Decisions of the Freedom of Association Committee of the Governing Body is that the right to go on strike may be restricted or prohibited:

- a) In the public service only for public servants exercising authority in the name of the State; or
- b) In essential service in the strict sense of the term meaning, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population.

The three-Judge bench held ‘66. *Looking at the right to go on strike against the right to life and applying the principles of Article 24 of the Constitution, we are persuaded that an outright prohibition of the right to go on strike for members of the 1st and 2nd Respondents would derogate from the core of that right, which in our view, is not what the Constitution contemplates.*

67. *We are however convinced that the right to go on strike for these workers is qualified and is therefore 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.*

68. *In light of this, we make the following orders.*

*a) Industrial action by health workers is not permitted unless there is a known and acceptable formula of ‘minimum service’ retention at every affected health facility. This limitation is in addition to those imposed by the conciliation procedures set by the Labour Relations Act;*

*b) The Cabinet Secretaries in charge of Health and Labour, in conjunction with all major stakeholders within the health sector, shall within the next 12 months from the date of this judgment, develop and publish guidelines to give effect to order (a) above;*

*c) The Registrar of the Employment and Labour Relations Court is directed to serve this judgment upon the Attorney General as well as the Cabinet Secretaries in Charge of Health and Labour.’’*

36. The court upholds the three-judge bench decision to apply the instant case. The court upheld the qualified constitutional right to strike of the respondent’s members on condition of compliance with minimum service’ retention at every affected health facility. The instant strike was called without compliance thus the Order of suspension of the strike on the 19<sup>th</sup> September 2025 was justified. The strike was thus illegal for non -compliance with the minimum service retention condition. The conservatory orders granted by the court are upheld.

Whether the members of the Respondent are entitled to promotions, redesignations ,and does the same creates legitimate expectation to the members of the union and whether such legitimate expectation is enforceable.

37. The petitioner did not specifically submit on this issue. The respondent submitted as follows- the Respondent's members' legitimate expectation for re-designations, promotions and fairness in employment pursuant to the requirements endorsed in the Public Service Commission Human Resource Manual, 2016 and the Petitioner bears the responsibility to its full implementation. THAT, on the issues relating to job groups and promotions are clearly provided for in the Human Resource Policies and Procedures Manual for the Public Service May, 2016 and as such the Petitioners should take cognizant of Sec. B.25, B.26, B.27, B.28 which states inter- alia: PROMOTIONS B.25 (1) Promotions in the public service will be based on qualifications and other requirements for appointment as stipulated in the career progression guidelines. (2) In selecting candidates for promotion, regard shall be given to affording adequate and equal opportunities to all gender, youth, members of all ethnic groups, persons with disabilities and minorities. Promotions dependent on examinations B.26 (1) Where an officer is to be promoted upon satisfying requirements which include the passing the date of he relevant Commission's examinations, the officer shall be promoted with effect from or she passed the examination. (2) The date of passing the examination is the date of release of results by the Commission. Promotion to posts in common establishment B.27 Promotion to posts within a common establishment shall cover the first two Promotion (2) grades at entry level or as determined by the Commission

from time to time. Dates of B.28 (1) The effective date of an officer's promotion will be the

date of the Public Service Commission decision or date of the MHRMAC meeting. (2) Promotion within common establishment posts shall be effective from the date the officer qualifies. 36. THAT, Service, in line with the PSC Human Resource Policy and Management of 2016 for the Public conducted matters as herein pertaining to Promotions and Re-designations motions are to be below: - B.21 (1) The Authorized Officer shall have power to re-designate officers from Job Group 'A' to 'H' upon recommendation of MHRMAC, subject to suitability interview for those moving to non-related cadres. (2) Re-designation of staff in Job Group 'J' and above shall remain the responsibility of the Public Service Commission. (3) Re-designation of officers shall be subject to the following conditions: (i) Suitability interview for officers who are moving from one cadre to another: Page 13 of 17 (ii) Suitability Interview shall not apply for posts which fall within the same job family: (iii) Shall be limited to positions in the first two (2) entry levels in any cadre; (iv) Shall take effect from the date of the decision; (v) Authorized Officers shall be required to promote qualified officers before processing the re-designation requests; (vi) Re-designation with continuous service will be allowed only for technical cadres whose job specifications are similar for both graduate and non-graduate officers; and (vii) Shall be subject to existence of vacancies. (4) The above notwithstanding, re-designations will be based on an officers competence, merit and ability in performance 37. That, in accordance with the Constitution of Kenya, all human being are born equal and are equal before the law. The Constitution recognizes the right to fair remuneration. The Employment Act, 2007 requires every employer to ensure that men and women workers are paid equally for work of equal value. 38. The conduct of the County is in breach of several constitutional

principles including the values and principles of public service enumerated under Article 232 of the Constitution including high standards of professional ethics and accountability for administrative acts. The County and the Board are expected to also uphold national values under Article 10 of the Constitution which include good governance, integrity, transparency and accountability. The County is obviously in breach of these principals since it has taken to the habit of glossing over concerns raised by employees by the use of agreements and undertakings which they have no intention of honoring. This is downright dishonesty which is a breach of the principles of leadership and integrity under Article 73(2) (i) of the Constitution. This Honourable Court has the power and duty to intervene and reign in this habitual infidelity to constitutional values. The Court must exert its authority to send a message that such conduct is intolerable and in fact actionable under Kenya's current constitutional dispensation. To enable the court reign in on the County, we submit that the principles of legitimate expectation in public service administration apply to the circumstances of this case. The doctrine as applicable in the circumstances of this case were discussed as follows in *Re Westminster City Council*, [1986] A.C. 668 at 692 (Lord Bridge) cited in *Onyancha & another (Suing on behalf of the proposed, Kenya Medical Doctors' Union) v Registrar of Trade Union (ROTU) & another (Petition E017 of 2023)* [2024] KEELRC 8: "...the courts have developed a relatively novel doctrine in public law that a duty of consultation may arise from a legitimate expectation of consultation aroused either by a promise or by an established practice of consultation. Legitimate expectation applies the Page 14 of 17 expectation, principles of fairness and reasonableness, to the situation in which a person has an promise. or interest in a public

body retaining a long-standing practice, or keeping a An instance of legitimate expectation would arise when a body, by representation or by past practice, has aroused an expectation that is within its power to fulfil a promise.” Expressly Legitimate expectation as a constitutional value arising from Article 47 of the Constitution is Administrative acknowledged as a justiciable matter under Section 7(2)(m) of the Fair Actions Act No 4 of 2015. The Act provides that: decision "A court may review an administrative action or decision if the administrative action or violates the legitimate expectations of the person to whom it relates" The discussed ideal in...as approach follows: for courts when called upon to enforce legitimate expectation was In adjudicating legitimate expectation claims, the court follows a two-step approach. First, it asks whether the administrator's actions created a reasonable expectation in the mind of the aggrieved party. Second, if the answer to this question is in affirmative, the second question is whether that expectation is legitimate. If the answer to the second question is equally affirmative, then the court will hold the administrator to the representation, and enforce the legitimate expectation. The first step in the analysis has both an objective and a subjective dimension. First, it is asked whether a reasonable expectation of a certain outcome was created. The representation itself must be precise and specific and importantly, lawful. This requirement also implies that individuals are required to know what the law is and consequently when a representation is lawful or not and hence can be relied upon or not. Once a reasonable expectation exists, the administrator is required to act in accordance with that expectation, except if there are public interest considerations, which outweighs the individual's expectation. The basic premise underlying the protection of legitimate expectations seems to be the promotion of

legal certainty. Individuals should be able to rely on government actions and policies and shape their lives and planning on such representations. The trust engendered by such reliance is said to be central to the concept of the rule of law. Forsyth describes the impact of such trust and the role the protection of legitimate expectations play in this regard aptly as follows: Page 15 of 17 "Good government depends in large measure on officials being believed by the governed. Little could be more corrosive of the public's fragile trust in government if it were clear that public authorities could freely renege on their past undertakings or long established practices" In the present case the expectations and contentions by the Union meets all the criteria for legitimate expectations as laid down by courts. Particularly, in the various written agreements aforesaid the County in express terms undertook to the Union and its members that it would Effect promotions and re-designations as provided for in Public Service Commission Human Resource Policies and Procedures Manual for the Public Service May, 2016, as per the Scheme of Service for Medical Laboratory Officers, approved by the Public Service Commission. 44. The County has not provided any lawful justification for renegeing on the commitments.

### Decision

38. As per the conciliator's report filed in court, the respondent relied on a scheme of service that was not presented to the court. The court observed that the cited Public Service Commission human resources manual did not include any provision for automatic promotion every three years. Therefore, the court is unable to decide on this issue. The

court was pleased to note that the employer, at the conciliation, was committed to addressing promotion and engaging in dialogue. The parties are encouraged to discuss and resolve the promotion and related issues outside of court under the tripartite arrangement.

### Conclusion

39. In conclusion, this court held that the petition was justified because the respondent, who works in the essential service sector (health), called their members to strike without complying with the minimum service retention requirements established in the 3 Judge Bench decision in Joseph Otieno Oruoch v Kenya Medical Practitioners Pharmacists & Dentists Union & another [2021] eKLR. The right to strike is limited by the need to balance it with the right to health, thus requiring minimum service retention. The 3 Judge Bench issued interdicts as follows: ‘The Cabinet Secretaries in charge of Health and Labour, in conjunction with all major stakeholders within the health sector, shall within the next 12 months from the date of this judgment, develop and publish guidelines to give effect to order (a) above; The Registrar of the Employment and Labour Relations Court is directed to serve this judgment upon the Attorney General as well as the Cabinet Secretaries in Charge of Health and Labour.’ There was no evidence before the court that these guidelines for minimum service retention had been published, leaving the unions in the health sector in limbo. The court found the prevailing situation unfair to the health sector workers. Consequently, the Court further orders the Registrar of the Court to serve this judgment upon the Attorney General and the Cabinet Secretaries in charge of Health and Labour to ensure

compliance with the orders in Joseph Otieno Oruoch v Kenya Medical Practitioners

Pharmacists & Dentists Union & another [2021] eKLR regarding the minimum service retention guidelines, in order to protect the workers' right to strike and the public's right to access health services. The court also notes that, as it stands, there is no established minimum service retention threshold to hold the unions accountable. Accordingly, I render my decision on the reliefs sought by the petitioner as follows-

- a. A declaration does issue to the effect that the strike notice dated 16th July 2025 issued by the Kenya National Union of Medical Laboratory Officers (KNUMLO), is illegal, null and void and contrary to Articles 10, 21, 27, 28, 41, and 43 of the Constitution of Kenya, 2010 as read with Section 81 of the Labour Relations Act- The court returned the strike was illegal for non-compliance with minimum service retention.
- b. A declaration does issue to the effect that any industrial action pursuant to the Strike Notice dated 16th July 2025 by the Kenya National Union of Medical Laboratory Officers (KNUMLO), their members, employees, agents, assigns, or any persons acting on their own behalf and interest is illegal and unconstitutional and contrary to Articles 10, 21, 27, 28, 41, and 43 of the Constitution of Kenya, 2010 and a threat and violation to the right to healthcare and provision of healthcare services thus contrary to Articles 25 of the Universal Declaration of Human Rights, 1948; Article 24 of the Convention on the Rights of the Child; Article 12 of the International Covenant on Civil and Political Rights; and Article 16 of the African Charter on Peoples and Human Rights.-The court returned the strike was illegal for non-compliance with minimum service retention.

- c. A declaration does issue to the effect that any industrial action pursuant to the Strike Notice dated 16th July 2025 by the Kenya National Union of Medical Laboratory Officers (KNUMLO), its members, employees, agents, assigns, or any persons acting on their own behalf and interest is illegal and an abdication and dereliction of duties hence warranting disciplinary action- The court returned the strike was illegal for non-compliance with minimum service retention. The court noted from the consent the respondent had genuine grievances majority of which were settled at conciliation. The court declined to issue an order for disciplinary in order to promote harmonious industrial relations between the parties.
- d. A permanent injunction does issue prohibiting the Kenya National Union of Medical Laboratory Officers (KNUMLO), the Respondent herein, its members, employees, agents, servants, assigns and/or anybody else claiming under them from interfering with the smooth running of health services at the County Government of Machakos. The court suspended the strike on the 19th September 2025. The court further issues a permanent injunction prohibiting the respondent from calling any industrial action before compliance with minimum service retention in all health centers where its members work.
- e. An order does issue to the effect that any employee and member of the Kenya National Union of Medical Laboratory Officers (KNUMLO), who took part in the illegal strike, is not entitled to any such payment and/or emoluments and/or salaries and/or benefits during the said period as a result of absconding their duties. The court

ruled that the strike was illegal for failing to comply with minimum service retention requirements. The court noted from the consent that the respondent had genuine grievances, the majority of which were settled at conciliation. The court declined to issue an order for the denial of salary and benefits due to the strike in order to promote harmonious industrial relations between the parties.

- f. Costs of the petition-. The strike in the instant case was justified; the parties negotiated and entered into a consent on most of the grievances. I make no order as to costs in the circumstances.

40. The file is marked as closed. It is so ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 13<sup>TH</sup> DAY  
OF MARCH, 2026.

J.W. KELI,

JUDGE.

IN THE PRESENCE OF:

Court Assistant: Otieno

Petitioner: Ochieng Oginga

Respondent: Odongo