



**County Government of Marsabit v Kenya Union of Clinical Officers (KUCO) & another (Cause E043 of 2024) [2025] KEELRC 814 (KLR) (13 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 814 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI  
CAUSE E043 OF 2024  
ON MAKAU, J  
MARCH 13, 2025**

**BETWEEN**  
**COUNTY GOVERNMENT OF MARSABIT ..... CLAIMANT**  
**AND**  
**KENYA UNION OF CLINICAL OFFICERS (KUCO) ..... 1<sup>ST</sup> RESPONDENT**  
**KENYA NATIONAL UNION OF NURSES (KNUN) ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. This suit arose from two strike notices issued by the respondents on 29<sup>th</sup> August 2024 and 9<sup>th</sup> September 2024. The two strike notices enumerated similar grievances and threatened to withdraw labour until the demands were fully met.
2. The claimant sued the respondents vide a statement of claim dated 1<sup>st</sup> October 2024 seeking the following reliefs: -
  1. A declaration that the ongoing strike by the 1<sup>st</sup> and 2<sup>nd</sup> Respondent's members which commenced on 16<sup>th</sup> September 2024 is illegal and unprotected.
  2. A declaration that the Respondents' union members belong to essential service providers in the strict sense hence prohibited from participating in strikes as provided by section 78 (1) (f) and section 81(3) of the *Labour Relations Act*, CAP 233.
  3. An order compelling the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to call of the strike and the Respondents' members working for the County Government of Marsabit to resume work with immediate effect.
  4. Orders that the Respondents be condemned to pay costs of the suit.



3. The claimant also filed a Notice of Motion dated even date seeking interlocutory injunction to stop the intended strike by the respondents' members. The court gave interim injunction pending the hearing of the motion. The 1<sup>st</sup> respondent filed a Replying Affidavit to oppose the said motion while the 2<sup>nd</sup> respondent filed Grounds of Opposition.
4. On 31<sup>st</sup> October 2024, the parties agreed to comprise the motion by extending the interim orders until the hearing and determination of the main suit. They further agreed to canvass the suit by written submissions.

### **Factual Background**

5. The parties herein have signed Recognition Agreements and have collectively been negotiating terms and conditions of service for unions' members. On 25<sup>th</sup> March 2024, the 1<sup>st</sup> respondent issued Nationwide strike notice to the Ministry of Health and Council of Governors highlighting their grievances. On 8<sup>th</sup> April 2024, the 2<sup>nd</sup> respondent also issued a similar strike notice.
6. The notices were acknowledged by the claimant by letter dated 12<sup>th</sup> April 2024, which also requested for dialogue with the union branch officials. On 8<sup>th</sup> July 2024 the Council of Governors and the 1<sup>st</sup> Respondent signed a Return to Work Agreement and the strike was called off.
7. However, soon thereafter the 1<sup>st</sup> respondent's members went into demonstrations which ended on 29<sup>th</sup> July 2024 when the parties signed a Return to Work Agreement. The agreement highlighted on the grievances by the workers and the claimant agreed to fix them.
8. The grievances included; -
  - a. Delay in payment of salaries.
  - b. Failure to provide comprehensive medical cover.
  - c. Failure to promote and re-designate the officers.
  - d. Failure to remit statutory deductions and other voluntary deductions.
  - e. Exclusion from County Leadership structure.
  - f. Failure to release officers for study leave
  - g. Staff shortages
9. The respondents issued the first strike notices on 29<sup>th</sup> August 2024 and 9<sup>th</sup> September 2024 accusing the claimant of not addressing the said grievances as promised vide the Return to Work agreements. However, the claimant averred that it fixed some of the grievances and was endeavoring to fix the rest save that some were beyond its control due to the delay by the National Treasury in disbursing revenue.
10. The claimant further averred that the strike was illegal and unprotected since the respondents were involved in essential services and section 78 (1) (f) and 81 (3) of the *Labour Relations Act* bars essential service providers from taking part in strikes and lockouts. Accordingly, the claimant averred that the right to strike under Article 41 of *the Constitution* is not absolute and it is superseded by the rights protected under section 26 and 43 (1) (a) of *the Constitution*.
11. The claimant further averred that the impugned strike has negatively affected the right to health of the residents of Marsabit and has led to unnecessary deaths. The claimant maintained that it is willing to resolve the grievances and urged the court to intervene in order since there is risk of continuous loss of lives that depend on the respondents' members for health services.



12. On the other hand, the 1<sup>st</sup> respondent maintained that the strike is lawful and protected since it is right of every worker to go on strike pursuant to Article 41 of the Constitution. It further averred that the suit is premature as it failed to meet the threshold set out under section 76 of the Labour Relations Act, Regulation L4 of the PSC HR Policies, 2016 and Clauses 3 (b & c) and 5 of the Recognition Agreement.
13. Finally, it averred that the claimant has not demonstrated any violation of public rights and interest by its actions. It blamed the claimant for the quagmire by exposing the grievants to dangerous work conditions, lack of basic tools of trade and failure to meet basic needs.
14. The 2<sup>nd</sup> respondent raised legal points to oppose the suit, namely, that the claimant lacks locus standi to sue since only the County Public Service Board had signed a Recognition Agreement with it on 19<sup>th</sup> December 2017; that every worker has the right to go on strike by dint of Article 41 of the Constitution; it served strike notices before downing tools; that during the strike, and there employers were offering minimum services hence the strike is protected under section 87 of the Labour Relation Act.

### Submissions

15. The claimant framed two issues for determination, namely, whether it has locus standi to sue, and whether the impugned strike is unprotected and unlawful. On the first issue, it submitted that the impugned strike notice directly affected its mandate to provide health care to its people.
16. It further submitted that section 77 of the Labour Relations Act allows a party to a dispute, that has received notice of a strike or lockout, to apply to prohibit the strike or lock-out as a matter of urgency if the strike or lockout is prohibited. It was argued that section 78 (1) (f) of the Act prohibits strike or lockout if the employer and employees are engaged in an essential service.
17. In view of the foregoing matters, it submitted that it has the locus standi to bring this suit. To buttress that point it cited *University of Nairobi v Kenya Universities Staff Union & 3 others* [2018] eKLR where this court held that the claimant had locus standi to sue under section 77 of the Labour Relations Act.
18. On the second issue, it was submitted that the impugned strike is prohibited under section 78(1) (f) and 81(3) of the Act because the respondents' members are engaged in essential services. It was further submitted that section 81(1) of the Act defines essential services while the Fourth Schedule of the Act lists down essential services including hospital services.
19. It further submitted that the right to strike and lock-outs under Article 41 of the Constitution are not absolute but are limited with respect to essential service providers by dint of Article 24, 26 and 43(1) (a) of the Constitution. For emphasis it cited *Inter-Public Universities' Councils Consultative Forum of Federation of Kenya Employers v Universities' Academic Staff Union & 5 others* [2018] eKLR, *County Government of Kirinyaga v Kenya Medical Practitioners, Pharmacists & Dental Union & 3 others* [2019] eKLR, *County Government of Makueni & Another v Kenya Union of Clinical Officers (KUCO) & 6 others* [2021] eKLR and *Kenya Ferry Services Limited v Dock Workers Union (Ferry Branch)*, [2015] eKLR.
20. On the other hand, the 1<sup>st</sup> respondent submitted that the suit is premature by dint of section 62 (1) (a) & (b) of the Labour Relations Act, Clause L4 of the PSC HR Policies Manual, 2016 and Clause 3 (b & c) of the parties Recognition Agreement because the dispute was never reported to the cabinet secretary for conciliation.



21. It was further submitted that under Article 41 of *the Constitution* and section 76 of the *Labour Relations Act* provides for the right to form, join or participate in the activities and programs of a trade union to go on strike.
22. It was further submitted that there was a binding Return to Work Agreement signed on 17<sup>th</sup> November 2023 which had not been invalidated through arbitration or court, and as such the respondents’ members had the right to exercise their right to go on strike after the claimant contravened the same. Consequently, the court was urged to strike out the suit with costs.
23. The 2<sup>nd</sup> respondent did not file any submission but chose to rely on its Grounds of Opposition, aforesaid.

### **Issues for determination and analysis**

24. The issues for determination are: -
  - a. Whether the claimant has locus standi to bring this suit.
  - b. Whether the suit is premature.
  - c. Whether the impugned strike is unprotected and illegal.
  - d. Whether the reliefs sought are merited.

### **Locus standi**

25. In general parlance, the term Locus standi means the right or capacity to bring a legal action or appear in a court. In this case the claimants cited section 77 of the *Labour Relations Act* which states as follows: -
  - “(1) A party to a dispute that has received notice of a strike or lock-outs may apply to the Industrial Court to prohibit the strike or lock-out as a matter of urgency if-
    - a. The strike or lock-out is prohibited under this part; or
    - b. the party that issued the notice has failed to participate in conciliation in good faith with a view to resolving the dispute.”
26. Section 78(1) (f) of the Labor Relations Act provides that: -

“No person shall take part in a strike or lock-out or in any conduct in contemplation of a strike or lock-out if the employer and employee are engaged in an essential service.”
27. Essential services are defined under section 81 (1) of the *Labour Relations Act* as follows: -

“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.”
28. Section 81 further provides as follows: -
  - “(3) There shall be no strike or lock-out in an essential service.
  - (4) Any trade dispute in a service that is listed as or declared to be an essential service may be adjudicated upon by the Industrial Court.”



29. Under the Fourth (4<sup>th</sup>) Schedule of the Act, six essential services are listed down including Hospital services. The claimant herein operates public hospitals within the County of Marsabit where the respondents' members are employed to render health services as Clinical officers and Nurses.
30. In view of the foregoing, I find that the employer and the employees herein are engaged in essential services and the right to strike or lock-out is expressly prohibited by section 78 (1) (f) and 81(3) of the Labour Relations Act. Therefore, I hold that the claimant had the locus standi to bring this suit to prohibit the strike called by the respondents' notices. In reaching this conclusion, I have affirmed my earlier decision in University of Nairobi case, cited by the claimant.

#### Premature suit

31. On the basis of section 77(1) and 81(4) of the Labour Relations Act, I am satisfied that a party who has been served with a notice of strike or lock-out in respect of an essential service is entitled to bring legal action in this court for it to prohibit the intended strike or lock-out. The said sections expressly permit this court, to adjudicate a dispute referred to it as a matter of urgency. Consequently, I hold that the suit is properly before the court and it is not premature.

#### Unprotected strike

32. The claimant's case is that the strike called by the respondents is illegal and unprotected because it is prohibited by section 78 (1) (f) and 81(3) of the Labour Relations Act. However, the respondents maintain that the strike is lawful because it is their right under Article 41 of the Constitution and section 76 of the Labour Relations Act.
33. There is no dispute that Article 41(2) of the Constitution guarantees the right of every worker the right to: -
- “(a) To fair remuneration;
  - (b) to reasonable working conditions;
  - (c) Form, join or participate in the activities and programs of a trade union; and
  - (d) to go on strike.”
34. However, the above rights are not among the absolute rights guaranteed under Article 25 of the Constitution. Therefore, the same can be limited by a legislation pursuant to Article 24 of the Constitution.
35. The International Labour Organization (ILO) has also appreciated that the right to strike can be limited with respect to essential services in the General Survey paragraph 159, thus: -
- “National Legislation frequently places limitation on the right to strike in certain activities, usually defined as essential services. In this respect, the ILO's supervisory bodies have taken the position that it is admissible to limit or prohibit the right to strike in essential services, defined as those the interruption of which would endanger the life, personal safety or health of the whole or part of the population.”
36. In this case, I must observe that there is an express statutory provision prohibiting or rather limiting the right to strike in essential services including health services providers. There is no special arrangements made between the employer and the employees in their Recognition Agreements or CBA to guarantee that minimum health services are provided during the strike period.



37. I have also noted that the respondent did not report a trade dispute with the Labour Cabinet Secretary for conciliation before issuing the strike notice. The respondents admitted that in July or thereabout, the parties signed a Return to Work Agreement and a previous strike was called off. In my view, any fresh strike notice required the respondents to comply with section 76 of the *Labour Relations Act* which states as follows: -

- “76. A person may participate in strike or lockout if-
- a. The trade dispute that forms the subject matter of strike or lockout concerns terms and conditions of employment or the recognition of a trade union;
  - b. The trade dispute is unresolved after conciliation-
    - i. Under this Act; or
    - ii. As specified in a registered collective agreement that provides for private conciliation of disputes; and
  - c. Seven days written notice of the strike or lockout has been given to the other parties and the Minister by the authorized representative of-
    - i. The trade union, in the case of a strike;
    - ii. The employer...in the case of a lockout.”

38. The Key thresholds of a protected strike falling from the foregoing provisions are:

- a. The trade dispute forming the subject of the strike concerns terms and conditions of employment or recognition of a trade union.
- b. The trade dispute was referred to conciliation but it was not resolved.
- c. Seven days written notice was issued to the other party and the Minister by the authorized representative of the trade union.
- d. In addition, the employer and employee are not engaged in essential services (see section 78 (1) (a & f) and 81(3) of the *Labour Relations Act*.

39. Having considered all the matters highlighted above, I find and hold that the impugned strike called by the respondents’ letters dated 29<sup>th</sup> August 2024 and 9<sup>th</sup> September 2024 was premature and unprotected since the procedure under section 76 of the *Labour Relations Act* was not complied with, and also that the right to strike was restricted or prohibited under section 78 and 81 of the *Labour Relations Act*.

### **Reliefs**

40. In view of the foregoing conclusion, I find that the claimant has proved its case on a balance of probability and award it all the following orders: -

- i. A declaration that the strike by the 1<sup>st</sup> and 2<sup>nd</sup> Respondent’s members which commenced on 16<sup>th</sup> September 2024 is illegal and unprotected.



ii. A declaration that the Respondents' union members belong to essential service providers in the strict sense hence prohibited/ limited from participating in strikes as provided by section 78 (1) (f) and section 81(3) of the [Labour Relations Act](#), CAP 233.

iii. An order compelling the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to call of the strike and the Respondents' members working for the County Government of Marsabit to resume work with immediate effect.

iv. The Respondents are condemned to pay costs of the suit.

**DATED, SIGNED AND DELIVERED AT NYERI THIS 13TH DAY OF MARCH, 2025.**

**ONESMUS N MAKAU**

**JUDGE**

Order

This judgment has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

**ONESMUS N MAKAU**

**JUDGE**

