



**Rasugu v Cabinet Secretary Ministry of Health & 2 others (Petition
E066 of 2024) [2025] KEELRC 1620 (KLR) (29 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1620 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E066 OF 2024**

B ONGAYA, J

MAY 29, 2025

**IN THE MATTER OF ARTICLES 22(1), 23(1) & (3), 159(2)(A,
E), 165(3)(B, D), (6) & (7), AND 258 OF THE CONSTITUTION
OF KENYA, 2010**

**IN THE MATTER OF THE ALLEGED CONTRAVENTION OF
ARTICLES 21(1), 22(1), 22(2) (C), 23(1), 23(3) (A), (B) & (E), 24(1)
& (2), 26(1), 27(1), 28, 29(D) & (F), 43(1)(A) & (2), AND 46(1)(C)
OF THE CONSTITUTION OF KENYA, 2010**

BETWEEN

RAJAB HAMISI RASUGU PETITIONER

AND

CABINET SECRETARY MINISTRY OF HEALTH 1ST RESPONDENT

**OFFICE OF THE PRESIDENT OF THE REPUBLIC OF
KENYA 2ND RESPONDENT**

ATTORNEY GENERAL 3RD RESPONDENT

JUDGMENT

1. The petitioner filed the petition dated 12.04.2024 in person at Kitale and made the following prayers:
 - a. A declaration be and is hereby issued that the decision of the 1st and 2nd respondents in failing to implement the 2017 Collective Bargaining Agreement (CBA) resulting to the doctors and clinical officers strike which is continuing to cause death and threatening the petitioner's health and rights is unconstitutional and unlawful, null and void ab initio.



- b. An order of mandamus directing the 1st and 2nd respondents to implement the 2017 Collective Bargaining Agreement (CBA).
 - c. An order for compensation for the pain and suffering the petitioner has faced due to the unconstitutional acts of the 1st and 2nd respondents.
 - d. General damages for pain and suffering.
 - e. The respondents be condemned to pay costs of this petition.
 - f. Such other order(s) as this Honourable Court shall deem just to grant.
2. The petitioner's case was as follows:
- a. The petitioner is a Muslim, retired senior citizen aged 64 years, and a patient under medication for pressure being attended to at Wiyeta Health Centre within Trans Nzoia County.
 - b. The strike by the doctors and clinical officers affected the petitioner and the entire public, who are unable to access the highest attainable standard of health and quality medical services from all public medical facilities in the Republic of Kenya. The petitioner is unable to pay expensive fees in private medical facilities because of the strike, thereby failing to attain the highest attainable standard of health.
 - c. The petitioner therefore presents the petition on his own behalf and in the public interest, bearing the responsibility under Articles 3, 10, 22 and 258 of the Constitution of Kenya to respect, uphold and defend the Constitution.
 - d. The 1st and 2nd respondents' breach of the 2017 CBA caused the said doctors and clinical officers' strike. The breach included the 2nd respondent's statements that there was no money to pay the doctors, and the 1st and 2nd respondents' statements on or about April 2024 that the medical interns would be paid a maximum of Kshs. 70,000/= contrary to the 2017 CBA. In addition, the 1st and 2nd respondents refused to have a kitchen table negotiation with the doctors, nurses and clinical officers to implement the said CBA.
 - e. The 1st and 2nd respondents' breach of the implementation of the 2017 CBA denies the petitioner and the public the enjoyment of their right to the highest attainable standard of health.
 - f. The 2017 CBA is important as it ensured every Kenyan at the county level receives good and quality medical services through the working together of both the 1st and 2nd respondents, and doctors.
 - g. The 2017 CBA is still in force, binds the 1st and 2nd respondent and has not been set aside by any court of law.
 - h. The petitioner has a legitimate expectation to receive the highest attainable standard of health, which the 1st and 2nd respondents have a constitutional duty to ensure. He further had a legitimate expectation that the 1st and 2nd respondents will implement the 2017 CBA and protect his right to health and life.
 - i. The 1st and 2nd respondents' refusal to settle the issue, implement the 2017 CBA and pay the doctors and clinical officers is making the petitioner and other public individuals who are unwell to suffer poignant emotional and physical pain.



- j. The 1st and 2nd respondents have not demonstrated that there is no money to implement the 2017 CBA.
3. The petitioner particularised the violation of the *Constitution* of Kenya as follows:
- i. The 1st and 2nd respondents neglecting to implement the 2017 CBA has exposed the petitioner and the public to a great danger of losing their lives due to lack of medication and attaining the highest standard of health, in violation of Article 26(1) on the right to life.
 - ii. The petitioner's right to enjoy the provisions of the *Constitution*, particularly the rights to life and highest attainable standards of health, has been threatened in violation of Article 27(1), which provides that every person is equal before the law and has the right to equal protection and equal benefit of the law.
 - iii. The 1st and 2nd respondents have discriminated against the petitioner, who is retired and unable to afford medication from private facilities, which is expensive, thus violating Article 27(4) that prohibits discrimination on any ground.
 - iv. The 1st and 2nd respondents' failure to implement the 2017 CBA has violated the petitioner's right to have his dignity respected and protected, contrary to Article 28.
 - v. The petitioner and the public are being tortured physically and psychologically for being unable to access quality medication in public health facilities, contrary to Article 29(d).
 - vi. The petitioner and the public are being treated in a cruel, inhuman and degrading manner contrary to Article 29(f).
 - vii. The petitioner and the public are not enjoying their right to the highest attainable standard of health, which includes the right to healthcare services that the 1st and 2nd respondents have failed in their duty to ensure. That threatens the petitioner's right under Article 43(1)(a).
 - viii. The petitioner and the public are being denied the right to emergency medical treatment with the lack of doctors and clinical officers in public hospitals to offer such treatment, in violation of Article 43(2).
 - ix. The 1st and 2nd respondents are violating the petitioner's and the public's right to protection of their health, safety and economic interests in violation of Article 46(1)(c).
4. The respondents entered appearance in the matter through the Honourable Attorney General but did not file any response to the petition. The Court has considered the material on record and returns that the petition will fail upon the following reasons:
- a. The petitioner has not shown by evidence that there was a strike and in circumstances that the respondents had failed to implement the CBA which affected her right to access healthcare services as was alleged.
 - b. The petitioner has not provided evidence that links the respondents to her alleged predicament and has failed to show by evidence that she was a patient at the material time.
 - c. The petitioner appears to urge that she was impacted adversely in view that the respondents breached a contract of employment as manifested in the alleged CBA that was allegedly breached. To that extent it appears to the Court that the petitioner was not a party to the employment relationship and as a public spirited litigant she is seeking a remedy about injury suffered because the contract of service, the CBA, had been breached. The Court considers that



concerns about delivery of public contracts of service or rather performance management and measurement would be a human resource function falling as a subject matter in the Court's jurisdiction in an appropriate case, just like other human resource functions of recruitment. However, breach of a CBA or even an individual contract of service like in the instant case would fall for the parties being privy to the contract or CBA to remedy the breach. Consequences of breach of the contract of service or CBA to third parties, like in the instant case, would fall for remedy and determination outside the jurisdiction of the Court in the sense of the employer's or enterprise liability to its customers or clients – clearly outside the realm of employment and labour relations.

- d. Thus, while sympathetic and reckoning that the petition was transferred from the High Court to this Court, and alert that there are no review proceedings on the jurisdictional issue, it would appear that the petition had been properly thought through, framed and instituted. The proceedings leading to the transfer are not apparent but the order was given on 18.04.2024. It appears that the jurisdictional issue is a complex issue always going to the root of court proceedings and ought never to be decided without delving into the true subject nature of the dispute. Such may be achieved by hearing the party initiating the case or parties actually before the Court. To say it in other words, it appears that a court of law before which a proceeding is filed cannot upon its own motion and without delving into the subject nature of the dispute, find suo moto that the court lacks jurisdiction, and one way or the other, determine the fate of the litigant's suit. A good practice would include the hearing or giving a chance for the hearing of the person initiating the court proceeding, and where the proceeding is not ex-parte, hearing of any other party being already served. It is that under the principle of litigant autonomy and ownership of the case or dispute as well as the settled principles of natural justice or fair hearing, the litigant ought to be accorded an opportunity to persuade the Court about the jurisdictional issue, even where, in the Court's preliminary opinion, it is considered that jurisdiction is lacking or is doubtful.
- e. For the foregoing findings, the petition will be struck out with no costs.

5. In conclusion the petition is hereby struck out with no costs.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 29TH MAY, 2025.

BYRAM ONGAYA

PRINCIPAL JUDGE

