



Wachu v Kenya National Union of Nurses & 2 others (Employment and Labour Relations Petition E007 of 2024) [2025] KEELRC 1455 (KLR) (22 May 2025) (Ruling)

Neutral citation: [2025] KEELRC 1455 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU
EMPLOYMENT AND LABOUR RELATIONS PETITION E007 OF 2024**

ON MAKAU, J

MAY 22, 2025

BETWEEN

RAMADHAN MOHAMED WACHU PETITIONER

AND

KENYA NATIONAL UNION OF NURSES 1ST RESPONDENT

KENYA NATIONAL UNION OF CLINICAL OFFICERS 2ND RESPONDENT

**KENYA NATIONAL UNION OF MEDICAL LABORATORY
OFFICERS 3RD RESPONDENT**

(Before Hon. Justice Onesmus N Makau on 22nd May, 2025)

RULING

1. This ruling relates to the 2nd respondent's Notice of Preliminary Objection dated 4th November, 2024 which seeks striking out of the Petition and the Interlocutory Motion dated 14th October 2024 on the following grounds:
 - a. That this Court lacks jurisdiction to hear and determine both the Petition and the Application.
 - b. That the Petitioner lacks the locus standi to bring the Petition as he is not an employer, employee or party directly involved in the employment of its members.
 - c. That the Petition and application as filed are frivolous, and an abuse of court process as the Petitioner has not demonstrated a direct link, personal or sufficient interest in the labour relationship entitling him to invoke the court's jurisdiction.
 - d. That the Petitioner has not met the threshold for public interest litigation under Article 22 of *the Constitution* and has moved the Court through Article 165 (3) (b).



2. The parties agreed to dispose of the objection by way of written submissions but only the 2nd respondent filed. The 3rd respondent supported the objection. On 12th March 2025, the petitioner's counsel told the Court that the petitioner had filed his submissions. The parties further told the Court that they were negotiating settlement and requested for mention date and I granted 27th March, 2025 for settlement or taking a ruling date.
3. On the said date the parties did not record settlement and the 2nd respondent's counsel even denied that there was negotiations. He even used abusive language to the court and asked me to recuse myself. I directed him to file a formal application and fixed the matter for mention on 6th May 2025 but come that date he told the court that he was no longer seeking my recusal and asked for ruling date for his preliminary objection. All the parties agreed to the request and I fixed the ruling for today.
4. The Petition is a public interest litigation filed by the Petitioner on his own behalf and that of other residents of Isiolo County who enjoy health care services offered by members of the Respondents under the employment of the County Government of Isiolo. He avers that the said residents are entitled to the highest attainable standard of health as guaranteed under Article 43 of *the Constitution* and the kernel of right to life under Article 26.
5. He further avers that the impugned industrial action by the Respondents' various members, has occasioned grievous harm and loss of lives across the county. He also avers that the strike has no regard to the rights and fundamental freedoms of the residents as it gravely threatens their right to life and right to health care. For these reasons, he sought judgement as follows:
 - a. A declaration that the impugned notices dated 2nd October 2024 by the 1st Respondent, 30th September 2024 by the 2nd Respondent and 24th September by the 3rd Respondent are unconstitutional, null and void.
 - b. A declaration that the ongoing strike/ industrial action by the members of the 1st, 2nd and 3rd Respondents pursuant to the notices in prayer a above is unlawful, prohibited and therefore unprotected and unsanctioned by law.
 - c. An order of permanent injunction do issue to prohibit the Respondents by themselves, agents, servants and whomsoever from any of its branches in particular Isiolo branch from exercising the rights under Article 37 and 41 (2) (d) of *the Constitution* with respect to the impugned notices dated 2nd October 2024 by the 1st Respondent, 30th September 2024 by the 2nd Respondent and 24th September 2024 by the 3rd Respondent.
 - d. A declaration that the right to life is greater than the right to go on strike and a finding that these are inconsistent with the general intent of *the Constitution*, when they apply to the members of the 1st, 2nd and 3rd Respondents.
 - e. A declaration limiting the right under Article 37 and 41(2) (d) of *the Constitution* for the members of the 1st, 2nd and 3rd Respondents as outlined in Article 24 (1) of *the Constitution*; and
 - f. The costs of the Petition be awarded to the Petitioner.
6. The 2nd respondent has made extensive submissions towards prosecuting the preliminary objection but the petitioner did not file any submissions to oppose the preliminary challenge on his petition. Although on 12th March 2025, Mr. Aluku Advocate told the Court that the petitioner had filed submissions to oppose the preliminary objection, that allegation was not true. I have checked from the CTS dashboard, I found no submissions uploaded by the petitioner. In fact, after the filing of the impugned petition and the motion he never uploaded anything else in the system.



7. It follows that the petitioner has not opposed the 2nd Respondent's Notice of Preliminary Objection and I allow it as prayed save for costs which I decline to award since the petition is in the form of public litigation suit.

DATED, SIGNED AND DELIVERED AT NYERI THIS 22ND DAY OF MAY, 2025.

ONESMUS N MAKAU

JUDGE

Order

This ruling 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.

