



**Kenya Medical Practitioners, Pharmacists and Dentists' Union v County Government of Kiambu
& another (Petition E174 of 2024) [2025] KEELRC 1518 (KLR) (19 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1518 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E174 OF 2024**

**HS WASILWA, J
MAY 19, 2025**

BETWEEN

**KENYA MEDICAL PRACTITIONERS, PHARMACISTS AND DENTISTS'
UNION PETITIONER**

AND

**COUNTY GOVERNMENT OF KIAMBU 1ST RESPONDENT
KIAMBU COUNTY PUBLIC SERVICE BOARD 2ND RESPONDENT**

JUDGMENT

1. By a Petition dated 18th October 2024, the Petitioner sought for the following reliefs; -
 - I. A declaration be and is hereby made that the Respondents' delay in remitting August and September salaries violated the Petitioner's members' rights to fair remuneration and reasonable working conditions under Article 41(2) (a) & (b) of the *Constitution*.
 - II. A declaration be and is hereby made that the Respondents' delay in remitting August and September salaries violated the Petitioner's members' Economic and Social Rights under Article 43 of the *Constitution*.
 - III. A declaration be and is hereby made that the Respondents' delay in remitting August and September salaries is in contravention of Section 18 (2) (b) of the Employment & *Labour Relations Act*.
 - IV. A declaration be and is hereby made that the Respondents' delay in remitting August and September salaries is in contravention of Article D.1.0 (2) Payment of Salary of the County Government of Kiambu Human Resource Policies and Procedures Manual for the County Public Service.



- V. An order does issue quashing ALL the Respondents' Chief Officer of Health Show Cause Letters dated 27th September 2024 serial REF: CGK/STAFF/HS threatening the Petitioner's members' with disciplinary action for alleged absence from duty without leave or lawful authority for being contrary to Article 41(2) (a) & (b) & Article 43 of the Constitution as read with Section 18 (2) (b) of the Employment & Labour Relations Act; and, Article D.1.0 (2) Payment of Salary of the County Government of Kiambu Human Resource Policies and Procedures Manual for the County Public Service.
- VI. An order does issue quashing ALL actions taken by the Respondents pursuant to the Respondents' Chief Officer of Health Show Cause Letters dated 27th September 2024 serial Ref: CGK/Staff/HS for being contrary to Article 41(2) (a) & (b) & Article 43 of the Constitution as read with Section 18 (2) (b) of the Employment & Labour Relations Act; and, Article D.1.0 (2) Payment of Salary of the County Government of Kiambu Human Resource Policies and Procedures Manual for the County Public Service.
- VII. The Respondents be and are hereby jointly and/or severally directed to pay the Petitioners the costs of their Petition.

Petitioner's Case

2. The Petitioner avers that the Respondents failed to remit the salaries for the month of August 2024 and September 2024 to the Interested Parties who were their employees as at 19th September 2024. The Interested Parties are members of the Petitioner, a Union of medical practitioners, pharmacists and dentists registered as such by the Registrar of Trade Unions under the Labour Relations Act, representing a simple majority of unionisable employees being Medical Practitioners, Pharmacists and Dentists in National and County governments.
3. The Petitioner avers that despite the material breach, its members continued to offer their services until such a time it became increasingly impossible for them to regularly attend to their work places due to lack of food, shelter, transport and means to meet their needs for failure to receive their salaries.
4. It is the Petitioner's case that the Respondents' action of failing to remit salaries violated its members' rights to fair remuneration and reasonable working conditions under Article 41(2) (a) & (b) of the Constitution; Economic and Social Rights under Article 43 of the Constitution and the same was further contravened Section 18 (2) (b) of the Employment & Labour Relations Act; Convention 95 Article 12 (1) of the ILO Protection of Wages Convention, 1949; and Article D.1.0 (2) Payment of Salary of the County Government of Kiambu Human Resource Policies and Procedures Manual for the County Public Service.
5. The Petitioner avers that overlooking its frequent delays in remitting salaries, the Respondents vide the 1st Respondent's Chief Officer of Health issued its members Show Cause Letters dated 27th September 2024 serial REF: CGK/STAFF/HS threatening them with disciplinary action for alleged absence from duty without leave or lawful authority.
6. It is the Petitioner's case that at the material time, its members were not participating in any industrial action save that they had been unable to attend to their work stations as a direct consequence of the Respondents joint failure to pay their salaries.

Respondents' Case

7. In opposition to the Petition, the Respondents filed a Replying Affidavit dated 22nd November 2024 sworn by Peter Ndegwa, the County Secretary and Respondents' Head of Public Service.



8. The Respondents aver that there is no evidence tendered by the Petitioner particularizing the arrears due to the Interested Parties as at 19th September 2024, therefore, this Court had been moved prematurely and on unsubstantiated allegations.
9. The Respondents aver that the delayed salaries has been occasioned by difficulties in receiving funds from the exchequer from the National Treasury which was communicated to the staff vide its letter dated 5th September 2024.
10. The Respondents aver that the 1st Respondent has since made payment for salaries of August and September 2024 on 27th September 2024 and 23rd October 2024. It further issued instructions for settlement of the October 2024 salaries on 19th November 2024 following receipt funds from the National Treasury.
11. The Respondents aver that the NTSC letters dated 27th September 2024 were issued in line with the Kiambu County Human Rights Policy and Procedures Manual which binds the parties herein. Therefore, this Court lacks jurisdiction to interfere with the employer's disciplinary process where it has no evidence it was commenced illegally.
12. It is the Respondents' case that despite being issued the NTS, a number of employees proceeded to abscond duties for 3 weeks necessitating the 2nd Respondent to issue a NTSC dated 9th October 2024.
13. It is the Respondents' case that where this Court should decline the invitation to interrupt internal administrative mechanism and accord the employer an opportunity to get a response from the employees and proceed with investigations in line with their procedures and manuals.
14. Further, should the Court interfere, the same will amount to violation to the doctrine of separation of powers as presently, no legal question arose for determination of this court and Respondents internal processes ought to be exhausted before coming to court.

Petitioner's Submissions

15. The Petitioner submitted that the Respondents in their replying affidavits made admission on their regular delayed salary payments as stated: arrangements for payment of August salaries were made on 27th September 2024; arrangements for payment of September salaries were made on 23rd October 2024; and arrangements for payment of October salaries were made on 19th November 2024.
16. Having demonstrated the regular delays in salaries payment, the Petitioner submitted that the unilateral change of dates of payment by the Respondents was in contravention of Section 10 (2) (i) read with Section 10 (5) of the Employment Act that states that where the intervals at which remuneration is paid changes, the employer shall, in consultation with the employee, revise the contract to reflect the change and notify the employee of the change in writing. No such notification of change was notified to the employees, there was no consultation with the employee and there was no revision of the contracts to reflect the change tendered by the employer.
17. The Petitioner submitted that an award for costs for the present suit in favour of the Claimant is not only merited but is just and fair the conduct of the Respondent. Demand letter was issued on 14th October 2024 and an amicable settlement could have been reached if the Respondent so desired. It relied on the decision in CECILIA KARURU NGAYU VS BARCLAYS BANK OF KENYA & ANOTHER [2016] eKLR which set the test for awarding of costs as follows:
 - i. the conduct of the parties,
 - ii. the subject of litigation,



- iii. the circumstances which led to the institution of the proceedings,
 - iv. the events which eventually led to their termination,
 - v. the stage at which the proceedings were terminated,
 - vi. the manner in which they were terminated,
 - vii. the relationship between the parties and
 - viii. the need to promote reconciliation amongst the disputing parties pursuant to Article 159 (2) (c) of the Constitution. In other words the court may not only consider the conduct of the party in the actual litigation, but the matters which led to the litigation, the eventual termination thereof and the likely consequences of the order for costs.
18. It is the Petitioner's submissions that it has sufficiently demonstrated its case and thus all orders sought are merited and should be allowed.

Respondents' Submissions

19. The Respondent submitted on three issues: Whether this Honorable Court has jurisdiction to interfere with the Respondents disciplinary process; whether the Respondent has properly enjoined the parties to the Petition; and whether the Constitution has been contravened or threatened to be contravened.
20. On the first issue, the Respondents submitted that by the Petitioner's own admission, its members were not participating in any industrial action, therefore, its members' actions are not protected by under Part X of the Labour Relations Act as there was no legal dispute concerning the terms and conditions of their members' employment. they relied on the case of Miguna Miguna – versus- Permanent Secretary, Office of the Prime Minister and the Attorney General (2011) eKLR where the Court held that
- “the employer was entitled to commence disciplinary proceedings against the employee and it was the duty of the employee to justify in the administrative disciplinary process the continuation of his employment. The court further stated that its duty would be to stop a process started with ulterior motive or one based on outright illegality or one which is defective ab initio.”
21. It is the Respondents' submission that the petition was prematurely filed aimed at arresting its disciplinary process; the Petitioner has not provided any evidence to demonstrate who of its members have been subjected to the said process and how the Respondents by issuing the letter to the interested parties violated any laws and policies. Reliance was placed in Judicial Review No. 13 Of 2017 - Dr. Bernard Soweke And Another Vs The County Secretary And Head Of Public Service, Bomet County And Another where the court noted as follows:

“It is true as stated above that Court should never interfere with internal disciplinary processes unless the process is in contravention of the Constitution or legislation or is in breach of the parties' agreement/contract and the HR Policies and Manual of the parties or the process is manifestly unfair in the circumstances of the case.

The process so far initiated was commenced with a suspension letter. The Applicant has been asked to respond. He has not. There is no indication that the employer - the Respondent hearing in proceedings in a manner that would make it impossible to deal with this case.



The Applicant has also not pointed out the breach or flouting of the Constitution or the law or even polices by the Respondent herein.”

22. On the second issue, the Respondents submitted they are dependent on the National Government to disburse funds for the administration of its functions such as the payment of salaries. Where a delay has occurred from the National Government as evidenced by the letter presented by the Petitioner, then the proper party to be enjoined in these proceedings is the Attorney General in line with Article 156 (4)(b) of the Constitution as they are mandated to represent the National Government in court.
23. The Respondents submitted that the Petitioner enjoined 317 interested parties in this matter without tendering any evidence that they consented to said joinder as per the Mutunga Rules.
24. The Respondents further submitted that ironically, one of the listed interested party is their Chief Health Officer who only knew of his participation at the point of the filing of the Petitioner’s pleadings. The burden on the Petitioner to demonstrate the legal or factual interests of the interested parties cannot be discharged by alleging they are its members, there must be cogent evidence in line with the principles set out by the Supreme Court in *Trusted Society of Human Rights Alliance v Mumo Matemu & Others* (2014).
25. On the third issue, the Respondents submitted that they have demonstrated that the Petitioner has not raised any grounds that the disciplinary process was unlawful, therefore, this Court lacks jurisdiction in the first instance to pre-empt the disciplinary process as the same would be contrary to the Respondents rights under Article 41 of the Constitution.
26. The Respondents submitted that the Petitioner has failed to demonstrate with specificity how the Constitution was violated as in the case of *Mumo Matemo* (supra) in which the Court of Appeal indicated that petitions must be based on clear facts and not mere allegations.
27. I have examined all the evidence and submissions of the parties herein. From the evidence herein, the Respondents aver that it is true that they owe the Petitioner’s members unpaid salaries but allude to none remittance of such from the National government.
28. The Petitioners on their part aver that while their members’ salaries were owed, the Respondents proceeded to issue them with show cause letters which they also sought to be quashed as their members were not participating in any industrial action.
29. In determining this matter, I note that the respondents have previously admitted not paying the salaries of the Petitioners members on time due to late or none disbursement of funds from the treasury. The Petitioners members however continued to do their work and aver that they have not participated in any industrial activity. This implies that the Respondents admit breach which they must make good.
30. The Petitioners on their part should continue to execute their duties and should not be victimized for what the Respondents aver as absence from duty in the face of an admission of the Respondents in failing to pay them salaries.
31. In order to maintain a semblance of a good working condition, I would direct that the Respondents should pay salaries owing to the Petitioners and the Petitioners should not participate in any unlawful industrial action.
32. Any pending purported disciplinary action against the Petitioners’ members based on this petition should be stayed forthwith.
33. There shall be no order of costs.



READ, DELIVERED AND SIGNED THIS 19TH DAY OF MAY, 2025.

HELLEN WASILWA

JUDGE

