



**County Government of Mombasa v Kenya National Union of Nurses
(Cause E001 of 2025) [2025] KEELRC 1972 (KLR) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1972 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E001 OF 2025**

**M MBARŪ, J
JULY 3, 2025**

BETWEEN
COUNTY GOVERNMENT OF MOMBASA CLAIMANT
AND
KENYA NATIONAL UNION OF NURSES RESPONDENT

RULING

1. The claimant filed this suit against the respondent following a strike notice scheduled to commence on 13 January 2025. In the notice dated 16 December 2024, the respondent raised 9 grievances. The claimant was seeking to have the strike notice declared unprotected.
2. The claim is supported by the witness statement of Fadhil Maamun, Chief Executive Officer of the claimant Public Service Board.
3. In reply, the respondent raised objections to the claim on the basis that the claimant lacks locus standi to file it under Article 235 of *the Constitution* and sections 57 and 59 of the County Government Act, which vests the functions of county employees with the County Public Service Board.
4. The respondent also raised the issue that it has a Recognition Agreement with the Mombasa County Public Service Board, and therefore, the claimant has encroached on the mandate of the County Public Service Board since the employment contract is between the respondent members and the Mombasa County Public Service Board. There is no employer-employee relationship under section 12 of the *Employment and Labour Relations Court Act*; hence, the claimant has no standing in this case.
5. According to the respondent, the issue in dispute is the Mombasa County Public Service Board's grading of its members. The issues noted by the claimant arise between the respondent and the Mombasa County Public Service Board, not the claimant.



6. In this regard, the respondent filed a counterclaim on the grounds that the strike notice issued was protected since there was no court order barring it. Previously, there was a return to work formula that had not been addressed, which related to its members' promotion. The respondent has counterclaimed for an order directing the claimant to promote its 240 members and pay salary arrears as approved by the SRC.
7. The matter came up for hearing on 26 June 2025. The claimant called its witness, Fadhil Maamun, the Chief Executive Officer of the claimant's Public Service Board. The respondent objected to the proceedings and their response, which raised the abovementioned issues.
8. The facts as set out above challenge the locus standi of the claimant to file these proceedings.
9. Indeed, the basis of the claim is the respondent's strike notice dated 16 December 2024. The notice is directed to the Cabinet Secretary, Ministry of Health, Nairobi; the Chief Executive Officer, Public Service Commission, Nairobi; the County Secretary and Head of County Public Service, Mombasa County Government; and the Secretary, County Public Service Board, Mombasa County Government.

Does the claimant have locus standi to file these proceedings?

10. Whereas there is a legal distinction between the entity of the claimant and the Mombasa County Public Service Board under which the witness called by the claimant, Fadhil Maamun, Chief Executive Officer of the Public Service Board, the notice dated 16 December 2024 issued to the claimant as well through the office of the County Secretary and Head of County Public Service.
11. Under Article 176 of *the Constitution*, a county government is established as a distinct unit. Under Article 235, the county public service board is responsible for staffing the County Governments.
12. In *Kisumu County Public Service Board & another v Samuel Okuro & 7 others* [2018] KECA 472 (KLR), the court held that under Article 176 of *the Constitution*, a county government consists of a county assembly and a county executive. This means that the powers of the county government under Article 235 of *the Constitution* must be exercised jointly by the county assembly and the county executive. The court further held that:

“... it is evident from Article 235 that the county government has the power to appoint and discipline persons employed in its public service including removing them from office. However, this power has been delegated to County Public Service Boards pursuant to Article 235 of *the Constitution* as read with section 57 of the CGA. Moreover, the powers to appoint and discipline county public service officers is not an executive power to be exercised by the governor alone, nor does the County Public Service Board act as an agent of the governor in exercising the powers, but as an agent of the county government.

13. Therefore, County Public Service Boards are corporate bodies established in each county under Section 57 of the CGA as read with Article 235 of *the Constitution*. The functions of the County Public Service Boards are spelt out under Section 59 of the CGA, which obligates each Board to perform the following functions on behalf of its county government:

- “(a) establish and abolish offices in the county public service;
- “(b) appoint persons to hold or act in offices of the county public service including in the Boards of cities and urban areas within the county and to confirm appointments;



- (c) exercise disciplinary control over, and remove, persons holding or acting in those offices as provided for under this Part;
- (d) Prepare regular reports for submission to the county assembly on the execution of the functions of the Board;
- (e) promote in the county public service the values and principles referred to in Articles 10 and 232;
- (f) Evaluate and report to the county assembly on the extent to which the values and principles referred to in Articles 10 and 232 are complied with in the county public service;
- (g) Facilitate the development of coherent, integrated human resource planning and budgeting for personnel emoluments in counties;
- (h) Advise the county government on implementation and development;
- (i) advise county government on implementation and monitoring of the national performance management system in the counties;
- (j) make recommendations to the Salaries and Remuneration Commission, on behalf of the county government, on the remuneration, pension and gratuities for county public service employees”.

14. The above provisions remove any doubt concerning the broad powers of the County Public Service Board to act on behalf of the county government in dealing with appointments, confirmations, promotions, discipline, and removal of persons holding county public service offices.

15. This position is reaffirmed in *Dominic Chungani Muteshi v County Government of Kakamega & another* [2021] KEELRC 301 (KLR) and *Tabitha Njambi Chigua & 12 others v County Government of Kiambu* [2016] KEELRC 74 (KLR).

16. Whereas the principal remains the County Government, such as the claimant, the delegated authority to the County Public Service Board cannot be ignored. While the claimant has proper standing in a matter such as herein, the question should be the non-joinder of the body with delegated mandate and not the lack of locus standi. This position is imperative because the respondent claims the Recognition Agreement is with the Mombasa County Public Service Board and not the claimant.

17. This is the claimant’s case, and as the right-holder claiming various remedies, it has the right to call its witnesses to support the claim.

18. On the highlighted issues in dispute, the remedies sought by the claimant, the court wishes to bring to the attention of the claimant the provisions of Section 59(j) of the CGA, which provides that:

- (j) Make recommendations to the Salaries and Remuneration Commission, on behalf of the county government, on the remuneration, pension and gratuities for county public service employees.

This shall suffice.

19. As analysed above, without going into the merits and demerits of the claim, with proper standing, the witness who stepped down shall be recalled for cross-examination by the respondent.

20. The objections that this is not a proper witness are hereby dismissed. The hearing to proceed.



DELIVERED IN OPEN COURT AT MOMBASA, THIS 3 JULY 2025.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and

