



**Nundu & another v Kenya County Government Workers Union (Nairobi Branch) & 4 others (Petition E110 of 2022) [2023] KEELRC 926 (KLR) (13 April 2023) (Judgment)**

Neutral citation: [2023] KEELRC 926 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION E110 OF 2022**

**MN NDUMA, J**

**APRIL 13, 2023**

**IN THE MATTER OF THREATENED INFRINGEMENT AND CONTRAVENTION  
OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLE 10(1), 19,  
22, 23, 24, 27, 41, 43, 46 AND 47 OF THE CONSTITUTION OF KENYA, 2010**

**BETWEEN**

**SAMUEL NUNDU ..... 1<sup>ST</sup> PETITIONER**

**DAVID NGESA ..... 2<sup>ND</sup> PETITIONER**

**AND**

**KENYA COUNTY GOVERNMENT WORKERS UNION (NAIROBI  
BRANCH) ..... 1<sup>ST</sup> RESPONDENT**

**KENYA COUNTY GOVERNMENT WORKERS UNION (STAFF  
BRANCH) ..... 2<sup>ND</sup> RESPONDENT**

**NAIROBI CITY COUNTY ..... 3<sup>RD</sup> RESPONDENT**

**THE GOVERNOR, NAIROBI CITY COUNTY ..... 4<sup>TH</sup> RESPONDENT**

**THE COUNTY SECRETARY, NAIROBI CITY COUNTY ..... 5<sup>TH</sup> RESPONDENT**

**JUDGMENT**

**Judgment**

1. The petitioner brought this petition dated July 4, 2020 seeking the following reliefs:-
  - (a) A declaration that the strike notice dated June 22, 2022 is illegal, null and void.
  - (b) A permanent injunction do issue restraining the 1<sup>st</sup> and 2<sup>nd</sup> respondent, their members and the leadership from carrying on with the intended strike.



- (c) A permanent injunction do issue restraining the 3<sup>rd</sup> respondent’s employees from participating in the intended strike.
- (d) Any further relief that the court may deem fit to grant.
2. The 1<sup>st</sup> and 2<sup>nd</sup> petitioners describes themselves as persons working for gain in Kibera, while the 3<sup>rd</sup> respondent is a limited liability company carrying out business at Nairobi.
  3. The petitioners purport to have instituted this action on their own behalf and on behalf of all other women, children and the general residents of Nairobi County under article 22 of the Constitution
  4. The petitioners are aggrieved by a strike notice issued by the 1<sup>st</sup> respondent and 2<sup>nd</sup> respondents on June 22, 2022 which notice the petitioners allege is in blatant disregard of section 79 of the Labour Relations Act. The strike was said to commence on July 4, 2022. That the livelihood of residents of Nairobi City will be interfered with if the strike is not stopped. That the issues complained of are subject of a pending case in cause No E018 of 2022 filed by the 1<sup>st</sup> and 2<sup>nd</sup> respondents.
  5. That the strike threatens economic and social rights of the petitioners under article 43 of the Constitution and the petitioners are entitled to equal protection of the law under article 27 of the Constitution. Interim orders suspending the strike were issued by Hon Maureen Onyango, J on July 5, 2022.
  6. The 1<sup>st</sup> and 2<sup>nd</sup> respondents filed replying affidavit and written submissions stating that on June 22, 2022, the 1<sup>st</sup> and 2<sup>nd</sup> respondents issued a strike notice intending to have their members commence strike on July 4, 2022. The 1<sup>st</sup> and 2<sup>nd</sup> respondents states that article 41 (1) (d) of the Constitution guarantees the 1<sup>st</sup> and 2<sup>nd</sup> respondents the right to go on strike.
  7. That section 46 of the Employment Act, 2007 further guarantees the rights to go on strike and that participating in a lawful strike does not constitute a fair reason for dismissal.
  8. The 1<sup>st</sup> and 2<sup>nd</sup> respondents further aver that section 76 of the Labour Relations Act allows a person to participate in a strike if the dispute that forms the subject matter of the strike concerns terms and conditions of service.
  9. That the notice dated June 22, 2022 outlines the basis of the intended strike which reasons are unresolved disputes concerning terms and conditions of employment.
  10. That the suit has been overtaken by events and therefore the court ought not to issue any orders in vain since the impugned strike notices called for a strike that was to take place in July, 2022.
  11. The 1<sup>st</sup> and 2<sup>nd</sup> respondent refers to the case of Kalya Soi Farm Cooperative Society v Paul Kirui and another [2003] eKLR where it was held:-
 

As is said “equity, like nature will do nothing in vain” on the basis of the maxim courts have held again and again it cannot satisfy itself by making orders which cannot be enforced or grant an injunction which will be ineffective for practical purposes if it will be impossible to comply with the injunction sought, the court will decline to grant it. ”
  12. That the petition be dismissed with costs.
  13. The 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents filed replying affidavits and submissions largely in support of the petition. The 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents state that the intended strike was unlawful since the union did not comply with section 62, 76 and 78 of the Labour Relations Act. That the Unions never followed the laid out procedure before issuing out the strike notice dated June 22, 2022. That the grounds for



intended strike have been dismissed by the parties and no meeting has ever been held between the respondents and the negotiating committee (Joint Branch Executive Committee Nairobi County) and therefore the 1<sup>st</sup> and 2<sup>nd</sup> respondents have not adhered to the procedure under section 76 of the [Labour Relations Act](#).

14. That no recognition agreement has been entered into by the parties prior to the issuance of notices. That parties have not gone for conciliation as provided under section 62 of the [Labour Relations Act](#) or under their own internal machinery. That there is no unresolved dispute in terms of section 76 of [Labour Relations Act](#).
15. That the 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> respondents were not served with seven (7) days notice and 4<sup>th</sup> respondent in particular was not served in persons.
16. That the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents have fully implemented the collective bargaining agreement between them and the 1<sup>st</sup> and 2<sup>nd</sup> respondents and have given a general wage increase to all Nairobi county employees thus the industrial action is unnecessary and unreasonable. That the petition be allowed.

### **Determination**

17. The court has considered the pleadings and the submissions by the parties and proceeds to deliberate the following issues for determination.
  - (i) Whether the petitioners have established any cause of action against the respondents.
  - (ii) Whether the suit has been overtaken by events and therefore moot.
18. In answer to the issue whether the suit is moot, the court notes that the sole purpose of filing the suit was to declare the strike notice dated June 22, 2022 illegal, null and void and issue an injunction restraining the 1<sup>st</sup> and 2<sup>nd</sup> respondents, their members and leadership from carrying on with the intended strike.
19. No orders were sought at all against the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents by the petitioners.
20. The petitioners have not disclosed in the petition the source of the information set out in the petition. The alleged issues in dispute are between the 1<sup>st</sup> and 2<sup>nd</sup> respondents and the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents. The dispute arose from a Collective Bargaining Agreement (CBA) concluded between the 1<sup>st</sup> and 2<sup>nd</sup> respondents and the 3<sup>rd</sup> respondent.
21. The Collective Bargaining Agreement is a contract of employment between the 3<sup>rd</sup> respondent and individual employees of the 1<sup>st</sup> and 2<sup>nd</sup> respondents. The petitioners are not privy to the Collective Bargaining Agreement and are therefore strangers to the matters they aver without disclosing source of their information to the court.
22. The proper petitioners in this case would have been the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents who appear to collude in this suit with the petitioners who are not members of the 1<sup>st</sup> and 2<sup>nd</sup> respondents nor are they officials of the 3<sup>rd</sup> respondent.
23. The court finds that the petitioners are not suited to bring this suit on behalf of the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents. The petitioners have failed to disclose in any specific manner how their rights are threatened or have been violated by the 1<sup>st</sup> and 2<sup>nd</sup> respondents whose rights to go on strike are guaranteed under article 41 of the [Constitution](#) and regulated by law and Collective Bargaining Agreement. The intended strike by members of the 1<sup>st</sup> and 2<sup>nd</sup> respondents was to take place on July 4,



2022, a date which is long past. We have a new County Government of Nairobi comprising of a new Governor and County Secretary.

24. Clearly, the suit has been overtaken by events in addition to the failure by the petitioners to disclose any cause of action against the 1<sup>st</sup> and 2<sup>nd</sup> respondents. The petitioners in addition to being unsuited to bring this suit in collusion with the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents have failed the test set out in *Annarita Karimi Njeru* case where the court held as follows:-

- i. Constitutional violations must be pleaded with a reasonable degree of precision.
- (ii) The article of the Constitution which entitles rights to the petitioner must precisely be enumerated and how one is entitled to the same.
- (iii) The violation must be particularized in precise manner.
- (iv) The manner in which the alleged violation was committed and to what extent.”

25. The petition does not therefore disclose any justiciable cause of action brought out by the petitioners.

26. Furthermore, the suit has been overtaken by events.

27. Accordingly, the petition lacks merit and is dismissed with no order as to costs.

**DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 13<sup>TH</sup> DAY OF APRIL, 2023.**

**MATHEWS N. NDUMA**

**JUDGE**

**Appearance**

**Mr. Ochieng for petitioners.**

**Odero & partners Advocates for 1<sup>st</sup> and 2<sup>nd</sup> respondents**

**Oruenjo Kibet and Khalid Advocates for 5<sup>th</sup> respondent**

**J.W. Weche Advocates for 3<sup>rd</sup> and 4<sup>th</sup> respondents**

