



Kenya Medical Practitioners, Pharmacists and Dentists Union v County Government of Nyamira (Petition 35 of 2020) [2023] KEELRC 2876 (KLR) (15 November 2023) (Ruling)

Neutral citation: [2023] KEELRC 2876 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
PETITION 35 OF 2020
S RADIDO, J
NOVEMBER 15, 2023
IN THE MATTER OF ARTICLES 24(1) & (5), 41,
41(2)(D), 36, 37 AND 43 OF
THE CONSTITUTION OF
KENYA
AND
IN THE MATTER OF: ALLEGED VIOLATION
AND/OR THREATENED
VIOLATION OF
FUNDAMENTAL RIGHTS
AND FREEDOMS OF THE
INDIVIDUAL AS ENSHRINED
UNDER ARTICLES 36, 40
AND 47 OF THE CONSTITUTION

BETWEEN
KENYA MEDICAL PRACTITIONERS, PHARMACISTS AND DENTISTS
UNION PETITIONER
AND
COUNTY GOVERNMENT OF NYAMIRA RESPONDENT



RULING

1. For determination is a Motion dated 13 July 2023 by the firm of Mauwa & Co Advocates seeking orders:
 - i. ...
 - ii. That this Honourable Court be pleased to grant leave to the firm of Mauwa & Co. Advocates to come on record for the Petitioner/applicant in place of the firm of D.L. Were & Co. Advocates, judgment in this matter having been entered by consent on 24th February 2021.
 - iii. That the County Secretary in the County of Nyamira be held in contempt of Court for wilful disobedience of the court orders issued on 24th February 2021.
 - iv. That upon being held in contempt, the said officer be jailed for a period of 6 months for disobedience of court orders or for such other period as the Court may deem just and appropriate.
 - v. That in the alternative to prayer (4) above, this Court be pleased to mete out such punishment as it may deem appropriate to the contemnor and the said officer be ordered to purge the contempt.
 - vi. That the costs of this application be borne by the Respondent.
2. The Court declined to certify the Motion urgent and the Union was directed to serve the Respondent.
3. The Court gave directions on 25 September 2023.
4. Instead of complying with the directions, the parties wrote a letter to the Court indicating that they had signed a Return to Work Formula, which they requested the Court to adopt in lieu of preparing and delivery this Ruling.
5. The Court has considered the Motion, affidavits, the record and the Return to Work Formula and makes the following findings.
6. Apart from the prayer in the Motion seeking leave for the firm of Mauwa & Co. Advocates to come on record, the instant application is a replica of a previous Motion by the Union dated 3 December 2021, alleging contempt.
7. In the aforesaid application, the Union sought orders:
 - i. ..
 - ii. That this Petition be fixed on a priority basis for notice to show cause why the Respondent's County Secretary and Head of the County Public Service Board, County Chief Officer, Health Services and County Chief Officer Public Service Management should not be committed to civil jail.
 - iii. That costs of this application be borne by the Respondent.
8. The Court considered the Motion and in a Ruling delivered on 18 May 2022, found that the Union had not demonstrated contempt. The application was dismissed.



9. The Union through the Motion under consideration is now attempting to resurrect an application on the same grounds and which application was duly considered on the merits.
10. The Court not only finds that it is *functus officio*, but that the instant application is a gross abuse of the court process.
11. The mere fact that a new firm of advocates has been instructed does not alter that fact. The said firm of advocates should have taken the time to update itself on the previous proceedings in the file instead of rushing to file an application similar to one which the Court had considered on the merits and dismissed.
12. And with respect to the parties, the Return to Work Formula has no legal and/or factual nexus to the initial cause of action presented by the Union in 2020 and the Court will not adopt it.

Conclusion and Orders

13. The Court finds the Motion dated 13 July 2023 a gross abuse of the court process and it is dismissed with costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISII ON THIS 15TH DAY OF NOVEMBER, 2023.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For the Union D.L. Were & Were Co. Advocates

For Respondent Nyachiro Nyagaka & Co. Advocates

Court Assistant Chrispo Aura

