



**Kenya Medical Practitioners, Pharmacists and Dentists Union v County Government of Nyamira (Petition 35 of 2020) [2022] KEELRC 1143 (KLR) (18 May 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1143 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
PETITION 35 OF 2020**

**S RADIDO, J**

**MAY 18, 2022**

**N 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 3 December 2021 by the Kenya Medical Practitioners, Pharmacists and Dentists Union (the Union) seeking 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.
2. The main ground in support of the contempt application was that the Respondent had refused to comply with the terms of a Return-To-Work Formula adopted by the Court on 26 January 2021.



3. The Respondent filed a replying affidavit to the Motion on 25 January 2022, and on 27 January 2022, the Court granted the Union leave to file and serve a further affidavit. The further affidavit was not filed.
4. The Court took oral submissions on 7 March 2022.
5. The Return-to-Work Formula, which was adopted by the Court, provided:
  - (1) That common cadre promotions (M-P) will be completed and letters issued by the end of February.
  - (2) That competitive cadre promotions (Q-S) will be advertised, interviews done, letters issued by the end of March.
  - (3) Implementation of promotions will subsequently be done after issuance of the promotion letters.
  - (4) All disciplinary action initiated against members of KMPDU participating in this strike are immediately terminated.
  - (5) All salaries withheld as a result of participating in this strike will be fully paid in two instalments: January 2021 and February 2021.
  - (6) Salary arrears borne out of 2017 promotions will be computed and paid after approval of supplementary budget.
  - (7) The Union commits to withdraw all cases against the County Government of Nyamira of any its officers from the Employment and Labour Relations Court immediately.
  - (8) All doctors to resume duty immediately but in any case, not later than Thursday 28<sup>th</sup> January 2021 at 8.00 am.
6. The Union asserted that the Respondent had not complied with 4 of the conditions: failed to issue letters of promotions for the common cadre (M-P), failed to advertise and conduct interviews for the competitive cadre promotions (Q-S), failed to carry out promotions and failed to pay salary arrears arising out of 2017 promotions.

#### **Common cadre promotions**

7. In the replying affidavit, the Respondent exhibited copies of promotion letters for the common cadre employees dated 27 August 2020 and 16 September 2020 to show that they had complied with the condition on promotion of these cadre of employees.
8. The Union argued that since these letters predated the Return-to-Work Formula, they were not relevant for the contempt application.
9. However, the Union did not place before the Court, a schedule or names of the common cadre employees who qualified for promotion and had not been issued letters of promotion.
10. The Court does not find wilful disobedience of this limb of the consent order.

#### **Competitive cadre promotions**

11. Competitive cadre promotions should be based on some scheme of service or human resource guidelines and although the parties did not put before the Court any evidence that advertisements for competitive promotions had been published, the Court is unable to find contempt on such a general term of the Return-to-Work Formula.



### **Implementation of Promotion**

12. The Return-To-Work Formula placed the Respondent under a duty to implement all promotions upon the issuance of promotion letters.
13. The Respondent filed IPPD Data capture schedules demonstrating salary incremental months for some named employees.
14. The Union did not disclose the particulars of any of its members who had been promoted, and in respect of whom the Respondent had declined or failed to implement the promotions.
15. The Court finds no proof of contempt regarding these promotions.

### **Salary arrears**

16. Despite not disclosing the details of the employees who were eligible for the salary arrears, the Respondent filed some payroll records suggesting that the arrears had been paid.
17. On the state of the record before the Court, there is no evidence the Court can consider and use to find that the Respondent has been in default on the agreement on salary arrears.
18. The law on contempt has developed ingredients that a party asserting that there has been contempt should prove. The Union missed that threshold by a long pole.

### **Conclusion and Orders**

19. Based on the material placed before it, the Court finds that the Union has not satisfied the threshold of showing contempt. The Motion dated 3 December 2021 is dismissed with costs to the Respondent.

**DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 18<sup>TH</sup> DAY OF MAY 2022.**

**RADIDO STEPHEN, MCIARB**

**JUDGE**

### **Appearances**

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

For Respondent Nyachiro Nyagaka & Co. Advocates

Court Assistant Chrispo Aura

