



County Government of Meru v Kenya Union of Clinical Officers (Employment and Labour Relations Cause E009 of 2020) [2022] KEELRC 12747 (KLR) (28 September 2022) (Judgment)

Neutral citation: [2022] KEELRC 12747 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU
EMPLOYMENT AND LABOUR RELATIONS CAUSE E009 OF 2020
DKN MARETE, J
SEPTEMBER 28, 2022

BETWEEN

COUNTY GOVERNMENT OF MERU CLAIMANT

AND

KENYA UNION OF CLINICAL OFFICERS RESPONDENT

JUDGMENT

1. This matter was originated by way of a Statement of Claim dated December 17, 2020. It does not disclose any issue in dispute on its face.
2. The Respondent in a Respondents Response to Memorandum of Response and counter claim dated January 29, 2021 denies the claim and prays as follows;
3. The claimant's case is that the parties relates as employees and union in the Respondent's sector.
4. It is her further case that the Respondents members have joined a nationwide strike which began on December 7, 2020. This was orchestrated by the Respondents strike notice dated November 23, 2020 that had threatened a withdrawal of services after fourteen days.
5. The claimant's further case is that the strike was despite conciliatory overtures by the parties. This is as follows;
 4. That this is despite the respondent members in Meru County being involved in conciliatory talks with the applicant vide Meru ELRC No E002 of 2020 on similar demands as the ones raised in the strike notice dated November 23, 2020.
 5. That out of an act of the highest trickery for the respondents members in Meru County have joined the nationwide strike when on the December 14, 2020 they signed an agreement with the applicant, which agreement effectively dealt with all issues raised by the respondent.



6. That the agreement dated December 14, 2020 was a culmination of an earlier agreement dated the July 28, 2020 drawn between the Union leaders of all Meru County Health Care Workers and the County Executive, which agreement captured the Health Care Workers grievances in Meru County.
 7. That the said agreement was out of a conciliation process borne out of the need to finally solve the many grievances raised by all Meru County Health Care Workers.
 8. That it is startling that the respondents have proceeded to join the nationwide strike when the applicant has fully committed to solve all their grievances and made a commitment by signing an agreement dated December 14, 2020 with the respondents Meru Branch at the Meru County Labour Office.
6. The claimants avers that the strike is illegal and unlawful and further that the respondent ought to have exhausted the statutory procedures of dispute resolution under the [Labour Relations Act](#) before resorting to the strike. She puts it thus;
14. That the respondent's membership plays a critical role in provision of essential health services as captured by section 81 of The [Labour Relations Act](#) and hence withdrawal of their services is not allowed by the law and/or must be preceded by the mandatory initial dispute resolution mechanism.
 15. That the withdrawal of the said essential services by the members of the respondent is prohibited by the said pertinent provisions of the [Labour Relations Act](#) and the respondent's said action will lead to interruption of health services which will in turn endanger the lives and health of the populace and have more catastrophic calamities.
 16. That the respondent's action will greatly affect the entire populace of Meru County which will be exposed to grave dangers and other health ramifications.
 17. That pursuant to Sections 78 and 81 of the [Labour Relations Act](#), the strike is indeed illegal and unprotected.
 18. There is no other suit pending in court between the parties herein over the same subject matter.
 19. The court has jurisdiction to hear and determine this suit.
- She prays thus;
- a. A declaration that the ongoing strike and/or withdrawal of services by members of the respondent in Meru County is illegal, unlawful and unprotected.
 - b. An order compelling the respondent and its members to resume back to their various working stations in Meru County.
 - c. Costs of the suit.
7. The Respondent's case is that it is the claimant who has been unco-operative and conceited on matters labour relations *inter partes*. A conciliation was had on February 1, 2021 and a Return to Work Formula formulated but the claimant has refused to sign the same.
8. The Respondents further case is a denial of entry into any other agreement
4. The Respondent denies the allegation and insinuation that it has ever entered into any other agreement directly with the claimant relating to the strike notice of November 23, 2020 or at



all apart from the Agreement reached with the Council of Governors acting on behalf of the claimants as per the content of the Return to Work Formula of January 1, 2021.

6. The claimant has in the Statement of Claim made various repetitive and bare allegations that the strike is unlawful. The claimant is put to strict proof of the allegation.
 13. Consequently, the health workers' unions including the Respondent were compelled to issue a strike notice on the November 23, 2020 primarily inter-alia raising issues of:
 1. Provisioning of adequate and quality of the right PPEs at all levels of health service delivery.
 2. All clinical officers belonging to the vulnerable group (pregnant, above 55 years or with pre-existing medical conditions) be exempted from active frontline duty and be directed to work from home.
 3. Provision of a comprehensive medical cover to cater for health workers as well as their dependents and designation of facilities for management of health workers who contract COVID-19.
 4. Comprehensive group life, last expense, enhanced work injury benefits and group personal accidents cover to all the clinical officers.
 5. All salaries for Universal Health Coverage staff deployed to counties be paid within the next fourteen days as well as all those counties who are yet to pay.
 6. Health risk allowance be harmonized and increased to Kshs 30,000 to cushion clinical officers from financial stress.
 7. Recruitment and employment of 3,000 clinical officers on permanent and pensionable establishment to replace those exempted from active duty, replace those quarantined or isolated and manage the surging numbers of patients due to COVID 19.
 8. The Public Service Commission to be directed to fast tract the pending appeals of Kirinyaga County in respect to the unprocedural dismissal of clinical officers, nurses and other Healthcare workers.
 9. All clinical officers and nurses serving in the Health institutions under the Public Universities to be paid call Allowance, Health service Allowance for clinical officers and nursing service Allowance for nurses similar to their counter-parts in the Ministry of Health and County Governments.
 10. All clinical officers currently serving on contract terms be converted into permanent and pensionable establishment.
 11. A health Service commission be included in the constitutional amendment bill to ensure better management of health workers welfare.
 12. All promotions across all counties and ministry of Health be effected and arrears paid as per the Return to Work formula of October 5, 2017, the CBA for clinical officer that has stalled for four (4) years be concluded, signed and deposited in court and the scheme of service that has stalled since 2017 be ratified within the next fourteen (14) days.



17. The invitation resulted in the formation of a multi-agency conciliation working group that held several consultative and bipartisan discussions that on December 30, 2020 resulted in a detailed agreement of terms that were set out in an 18-point Return to Work Agreement. The terms agreed to and eventually set out in the Agreement were as follows;
- a. The employers undertake to ensure provision of adequate and appropriate PPEs as per the Rational Use of PPEs Guidelines by Ministry of Health at all times for Union members in all levels of health facilities. Appropriate committees be constituted as per the OSHA Act for monitoring purposes;
 - b. The National Treasury to fast track release of the required budgetary allocation to enable the Counties procure a Comprehensive Insurance Group Life, last Expense, Enhanced Work Injury Benefits (WIBA) and Group Personal Accident Cover as provided for by NHIF. Additionally, counties will make arrangements to procure the Comprehensive Medical Insurance Cover as provided by NHIF, on expiry of the running contracts signed between the Counties and other Insurance providers.
 - c. That Employers shall endeavour to enlist employees on contract above one (1) and those who are Permanent and Pensionable to be on comprehensive Group Life Insurance Cover. For employees on contract below one (1) year, employers shall consult the National Treasury, Ministry of Public Service and Gender and NHIF on their inclusion to Group Life Insurance Cover.
 - d. The employers shall designate fully equipped COVID-19 isolation health facilities for treatment of union members.
 - e. The ministry of Health (through the office of Cabinet Secretary in consultation with the Hon. Attorney General and the Public Service Commission shall mediate the pending labour disputes in Kirinyaga County Government.
 - f. The employers shall expedite consultations with Salaries and Remuneration Commission to ensure the union members in administration those in University health services and those teaching in Universities and Medical Framing Colleges are not disadvantaged from Health Workers Services Allowance and Emergency Call Allowance;
 - g. The employers to review Risk Allowance for clinical officers to Kshs 15,000/- upon necessary approvals and budget allocation.
 - h. Employers to ensure that employees hired on contractual terms are compensated on obtaining terms and conditions of service as guided by the Remuneration Policy;
 - i. The Ministry of Health to consider renewal of contracts of the clinical officers recruited to serve in COVID-19 isolation and treatment centres across the country;
 - j. The employers shall effect all promotions and their resultant arrears in line with the public service commission Human Resource Manual, 2016.



- k. The parties agree to resume stalled Collective Bargaining Agreements (CBA) negotiations, and register the CBA in court by end of February 2021;
 - l. The parties agree to immediately withdraw all court cases arising from the strike action as per the notice of November 23, 2020 upon execution of this agreement;
 - m. The unions agrees to call off the strike and members return to work within 24 hours;
 - n. The employers undertake that no Union member will be victimized or subjected to any form of disciplinary process whatsoever for participating in the strike and that any disciplinary, show cause or other form of letters issued shall be withdrawn and marked as null and void on execution of this Agreement;
 - o. The employers shall ensure that all statutory and third party deductions are remitted on time in line with prevailing laws;
 - p. That the employers undertake immediate release all the withheld salaries and allowances to the members of the Union in respect to the strike notice of November 23, 2020 upon execution of this Agreement;
 - q. The parties commit to resolve all other outstanding issues raised in the strike notice of November 23, 2020 on this Agreement and that the Multi-Agency Standing Committee to provide Comprehensive monthly periodic Reports for parties to monitor the progress on implementation of this Agreement. The employers undertake to facilitate and address issues affecting the clinical officers through the Multi-Agency Standing Committee.
 - r. The signatories herein have full and lawful mandate whether inherent or delegated to execute this return to work formula.
2. It is reiterated that the strike initiated by the Notice of November 23, 2020 was precipitated by various issues set out in the letter of November 16, 2020; to wit:
- 1. The failure by the claimant and other County Governments to provide adequate and quality of the right PPEs at all levels of health service delivery.
 - 2. The failure by the claimant and other county Governments to put in place measures to ensure that all clinical officers belonging to the vulnerable group (pregnant, above 55 years or with pre-existing medical conditions) are exempted from active frontline duty.
 - 3. The failure by the claimant and other county Governments to provide a comprehensive medical cover to cater for health workers as well as their dependents and designation of facilities for management of health workers who contract COVID 19.
 - 4. The failure by the claimant and other County Governments to provide a comprehensive group life, last expense, enhanced work injury benefits and group personal accidents cover to all the clinical officers.



5. The failure by the claimant and other county Governments to pay all salaries for Universal Health Coverage staff deployed to counties.
 6. The failure by the claimant and other County Governments to harmonize and adequately pay Health Risk allowances to the Respondent's members.
 7. The need for recruitment and employment of at least 3,000 clinical officers on permanent and pensionable establishment to replace those exempted from active duty, replace those quarantined or isolated and manage the surging numbers of patients due to COVID 19.
 8. Discrimination of clinical officers in the payment of various allowances including call allowances and health service allowances similar to their counterparts in the Ministry of Health and County Governments.
 9. The need to convert all clinical officers currently serving on contract terms into permanent and pensionable establishment.
 10. The fall back by the claimant and other county governments in promotions of the Respondent's members and default in payment of arrears and per the Return to work formula of October 5, 2017, the stalling of the CBA for clinical officer, and the stalling of the scheme of service since 2017.
6. In order to victimize, punish, subdue or otherwise intimidate the Respondent's members the claimant did and have continued to do the following:
- i. Purporting to commence and sustain or others conduct disciplinary proceedings against the Respondent's members on the unfounded allegation of absconding work;
 - ii. Purporting to issue threats in writing and through phone calls and messages intended to and formulated to intimidate the Respondent's members into abandoning strike;
 - iii. Blatantly lying that the Respondent's members are in breach of a court order issued on December 16, 2020 in Nairobi ELRC No 6494 of 2020. None of the parties herein are parties to the said suit and the orders arising from the said suit have nothing to do with the Respondent's members' strike;
 - iv. Threatening to undertake recruitments to replace the Respondent's members;
 - v. Withholding the Respondent's members' salaries
 - vi. Subjecting the Respondent's members to unsafe work place conditions;
 - vii. Issuing termination of employment letters where no disciplinary proceedings have been conducted;
 - viii. Issuing threatening public communication through mass and social medial intended to intimidate and scare the Respondent's members.
 - ix. Purporting to advertise generic employment vacancies with the intention to replace the Respondent's members.
 - x. Withholding of union due remittances.
- She pray thus;



1. The claimant's claim be dismissed with costs on full indemnity basis.
2. An order of declaration that the disciplinary proceedings and/or decisions taken by the claimant on the basis of the Respondent's members' participation in the strike that commenced on December 7, 2020 following the strike notice of 23rd November are unlawful, unconstitutional hence null and void to the extent that the strike has not been declared unprotected.
3. An order of declaration that the steps and/or decisions taken by the claimant to recruit other employees to replace the Respondent's members on the basis of the Petitioner's participation in the strike that commenced on December 7, 2020 following the strike notice of 23rd November are unlawful, unconstitutional hence null and void to the extent that the strike has not been declared unprotected.
4. An order of declaration that the disciplinary proceedings and/or decisions taken by the Respondents on the basis of the Respondent's members' alleged noncompliance with or resulting from orders of 16th December 2020 arising from Nairobi ELRC 6494 OF 2020 are unlawful, unconstitutional hence null and void.
5. An order of declaration that the disciplinary proceedings and/or decisions taken by the Respondents to recruit other employees to replace the Respondent's members on the basis of the Respondent's members' alleged noncompliance with or resulting from orders of December 16, 2020 arising from Nairobi ELRC 6494 OF 2020 are unlawful, unconstitutional hence null and void.
6. An order quashing, setting aside or otherwise annulling all disciplinary and/or personnel replacement decisions, steps and or proceedings taken by the claimant against the Respondent's members on the basis of the Respondent's members' participation in the strike that commenced on December 7, 2020 following the strike notice of 23rd November and/or the Respondent's members' alleged noncompliance with or resulting from orders of December 16, 2020 arising from Nairobi ELRC 6494 OF 2020.
7. An order be and is hereby issued directing the claimant to pay with interest at court rates all wages that remain unpaid on account of the Respondent's members' participation in the strike that commenced on December 7, 2020 following the strike notice of 23rd November and/or the Respondent's members' alleged noncompliance with or resulting from orders of December 16, 2020 arising from Nairobi ELRC 6494 OF 2020.
8. An order be and is hereby issued directing the claimant to reinstate the Respondent's members and all health workers who have been dismissed on account of the Respondent's members' participation in the strike that commenced on December 7, 2020 following the strike notice of 23rd November and/or the Respondent's members' alleged noncompliance with or resulting from orders of December 16, 2020 arising from Nairobi ELRC 6494 OF 2020.



9. A permanent injunction be and is hereby issued restraining the claimant from subjecting the Respondent's members and or any other health worker to disciplinary proceedings or action on account of the Respondent's members or such health workers' participation in the strike that commenced on December 7, 2020 following the strike notice of 23rd November and/or the Respondent's members' alleged noncompliance with or resulting from orders of December 16, 2020 arising from Nairobi ELRC 6494 OF 2020.
10. An order be and is hereby issued directing that an independent audit be carried out by an independent occupational safety and health officer and medical officer of health and a report thereon be filed in court detailing the measures and steps taken by the claimant to ensure that they have put in place at their health facilities sufficient measures and equipment, including effective PPEs, which would protect the Respondent's members from COVID -19 infection.
11. General damages for breach of constitutional rights.
12. Exemplary damages.
13. Any other and further orders that the court may deem fit to grant in the interest of justice.
14. The costs of the counterclaim be borne by the claimant on full indemnity basis.

9. The issues for determination therefore are;

1. Whether the claimant is entitled to the relief sought.
 2. Whether the Respondent is entitled to the Counterclaim.
 3. Who bears the costs of the claim and Counter Claim.
10. The 1st issue for determination is whether the claimant is entitled to the relief sought. The claimant's case and submission is that the ongoing strike and or withdrawal of services by members of the Respondent is unlawful, unprotected and therefore this court should compel them to return to their working stations.
 11. The Respondents disagree with this and aver that the withdrawal of services is legitimate and a causative of the claimant's refusal and neglect of the provision of basic and life and death necessities and materials requisite for their operations at the workplace.
 12. The history of the health sector nationally post-Covid-19 is not new to any of us. It is public knowledge. The skirmishes occasioned by altercations between the employers and health workers is also public knowledge.
 13. All this time, it was expected that employers would furnish their workers with adequate safety equipment to protect them from the vagaries of Covid-19. Where this failed, like in the circumstances of this case, industrial unrest ensued.
 14. We cannot hold the workers accountable and responsible for this unrest and disharmony at the workplace. The ball must stop at the door of the employer. I therefore find no merit in this claim and hold as such. The claimant is not entitled to the relief sought.
 15. The 2nd issue for determination is whether the Respondent is entitled to the Counter Claim. She is. This is because the prayers in the Counter Claim are routine and ordinary requisitions for safety at



the workplace. It is only fair and humanitarian that these are supplied and furnished to ensure a safe working environment for the staffers.

16. I am therefore inclined to dismiss the claim and award the Counter Claim on the following terms;
- i. The claimant's claim be and is hereby dismissed with costs on full indemnity basis.
 - ii. A declaration be and is hereby issued that the disciplinary proceedings and/or decisions taken by the Claimant on the basis of the Respondent's members' participation in the strike that commenced on December 7, 2020 are unlawful, unconstitutional hence null and void to the extent that the strike has not been declared unprotected.
 - iii. A declaration be and is hereby issued that the steps and/or decisions taken by the claimant to recruit other employees to replace the Respondent's members on the basis of the Petitioner's participation in the strike that commenced on December 7, 2020 following the strike notice of November 23, 2020 are unlawful, unconstitutional hence null and void to the extent that the strike has not been declared unprotected.
 - iv. A declaration be and is hereby issued that the disciplinary proceedings and or decisions taken by the Respondents on the basis of the Respondent's members' alleged noncompliance with or resulting from orders of December 16, 2020 arising from Nairobi ELRC 6494 OF 2020 are unlawful, unconstitutional hence null and void.
 - v. A declaration be and is hereby issued that the steps and or decisions taken by the Respondents to recruit other employees to replace the Respondent's members on the basis of the Respondent's members alleged noncompliance with or resulting from orders of December 16, 2020 arising from Nairobi ELRC 6494 OF 2020 are unlawful, unconstitutional hence null and void.
 - vi. An order be and is hereby issued quashing, setting aside or otherwise annulling all disciplinary and or personnel replacement decisions, steps and or proceedings taken by the Claimant against the Respondent's members' on the basis of the Respondent's members participation in the strike notice of November 23, 2020 and or the Respondent's members' alleged noncompliance with or resulting from orders of December 16, 2020 arising from Nairobi ELRC 6494 OF 2020.
 - vii. An order be and is hereby issued directing the Claimant to pay with interest at court rates all wages that remain unpaid on account of the Respondent's members' participation in the strike that commenced on December 7, 2020 following the strike notice of November 23, 2020 and or the Respondent's members' alleged noncompliance with or resulting from orders of December 16, 2020 arising from Nairobi ELRC 6494 OF 2020.
 - viii. An order be and is hereby issued directing the Claimant to reinstate the Respondent's members and all health workers who have been dismissed on account of the Respondent's members' participation in the strike that commenced on December 7, 2020 following the strike notice of November 23, 2020 and or the Respondent's members' alleged noncompliance with or resulting from orders of December 16, 2020 arising from Nairobi ELRC 6494 OF 2020.
 - ix. A permanent injunction be and is hereby issued restraining the claimant from subjecting the Respondent's members and or any health worker to disciplinary proceedings or action on account of the Respondent's members or such health workers' participation in the strike that commenced on December 7, 2020 following the strike notice of November 23, 2020 and or the



Respondent's members' alleged noncompliance with or resulting from orders of December 16, 2020 arising from Nairobi ELRC 6494 OF 2020.

- x. An order be and is hereby issued directing that an independent audit be carried out by an independent occupational safety and health officer and medical officer of health and a report thereon be filed in court detailing the measures and steps taken by the Claimant to ensure that they have put in place at their health facilities sufficient measures and equipment, including effective PPEs, which would protect the Respondent's members from COVID-19 infection.
- xi. General damages for breach of constitutional rights.
- xii. That general damages be and are hereby assessed at Kenya Shillings six hundred thousand only (Kshs 600,000.00).
- xiii. The costs of the Counterclaim be borne by the Claimant.

DATED AND DELIVERED AT NYERI THIS 28TH DAY OF SEPTEMBER 2022.

D.K.Njagi Marete

JUDGE

Appearances

1. Mr. Karanja instructed by Kiogora Mugambi & Company Advocates for the Claimant.
2. Odongo Okatch instructed by AKO Advocates LLP for the Respondent.

