



County Government of Meru v Kenya National Union of Nurses (Cause E006 of 2020) [2022] KEELRC 13159 (KLR) (2 November 2022) (Judgment)

Neutral citation: [2022] KEELRC 13159 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU
CAUSE E006 OF 2020
DKN MARETE, J
NOVEMBER 2, 2022**

BETWEEN
COUNTY GOVERNMENT OF MERU CLAIMANT
AND
KENYA NATIONAL UNION OF NURSES 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 by a respondent's defence and counter claim dated June 30, 2021 denies the claim and prays that this be dismissed with costs. She prays for an award of a counter-claim.
3. The claimant's case is that the respondents members in Meru County joined a national strike on December 7, 2020 vide a strike notice dated November 23, 2020 and issued by the respondent union.
4. The claimant's further case is that this was despite the respondent members being involved in the conciliatory talks with the applicant in Meru ELRC No.E002 of 2020 on similar demands as those raised in strike notice dated November 23, 2020.
5. It is her other case that the agreement of December 14, 2020 and July 28, 2020 captured all issues and concerns of the Health care workers in the county and therefore the misunderstanding occasioned by joining the strike. Her further position is that as a consequence of this, the strike is illegal and unlawful more so because the Respondents ought to have exhausted the statutory laid down mechanism of dispute resolution under the Labour Relation Act before withdrawing their services and resulting to a strike.
6. The claimant's further case is that the Respondent's membership plays a critical role in the provision of health services as provided under section 81 of the Labour Relations Act, 2007 and therefore



withdrawal of their services not allowed in law and or presided by the mandatory initial dispute resolution mechanism. The strike therefore is illegal courtesy of section 78 and 81 of the [Labour Relations Act](#).

She prays as follows;

- a. A declaration that the ongoing strike and/or withdraw 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 a denial to the claim. It is their case that every worker has a constitutional right to go on strike and participate in union activities as provided for under article 41 of [the constitution](#) of Kenya, 2010.
 8. The respondent's further case is that section 14(2) of the [Occupational Safety and Health Act](#) of 2007 requires an employee is entitled to leave his work place if he has reasonable justification to believe that imminent danger to his life and as such shall not be dismissed or discriminated against for such action by employer.
 9. Her other case is that the claimant has not taken any remedial action since the declaration of Covid-19 as a work occupational hazard so as to allow workers to operate in a safe environment as provided by section 14 of the [Occupational Safety and Health Act](#), 2007. The strike notice raised issues of safety at the work place with no response from the claimant and therefore the strike.
 10. The respondent's further case is that her members were ordered to resume duties unconditionally on 29th February, 2021 and therefore the suit declaring the strike illegal is spent as there is no ongoing strike, the members complied and resumed duty.
 11. The claimant's penultimate case is that this suit is spent on an academic exercise. It is overtaken by events and should be dismissed with costs.
 12. The respondent raised counter-claim and aver that her members participated in a protected strike as there was no court ruling declaring the strike illegal.
 13. It is her other case that despite this court ordering members of the union to resume work unconditionally the claimant deny them access to their work place until April 8, 2021 in such breach whereby occasioning suffering to members of public for lack of healthcare services. Their salaries were denied from January to April, 2021.
 14. The respondent's further fault the claimant for various violations of her members rights relating to their employment contracts and pray as follows;
 - a. An order directing the claimant (Meru County Government) to pay the unpaid salaries to the members of the union Respondent/claimant not paid from January 2021 to April, 2021.
 - b. An order quashing the transfer of the nursing officers as per the respondent/claimant list of documents marked as TK-3 in the respondent/claimant list of documents.
 - c. An order directing the claimant (Meru County Government) to pay the undedicated trade union dues from union members amounting to Kshs.1,143,996.00 from public resources/ own funds for the months of January and February 2021.



- d. An order directing the respondent/claimant to pay exemplary damages to claimant members at court rate.
 - e. An order directing the respondent/claimant to pay members of the union who were transferred more than 40 kilometers transfer allowance equivalent to their one month basic salary.
 - f. An order directing the respondent/claimant to pay the transferred members of the union baggage and transport allowance as per the guidelines of the department of transport Meru county government.
 - g. Any other order that the court deems fit to grant to make the ends of justice meet.
 - h. That the costs of this counter claim be provided for.
15. The parties chose not to do any written submissions on the subject. Therefore, a determination of the case can only be gleaned from the respective pleadings of the parties.
- The issues in dispute therefore are;
1. Whether the claimant is entitled to the relief sought
 2. Whether the Respondent is entitled to the counter claim
 3. Who bears the costs of this cause.
16. A scrutiny of this case brings out a case in favour of the respondent. She deems and submits that this case is spent and an academic exercise as there was no ongoing strike as at the time of her defence, June 30, 2021. The claim therefore becomes an academic exercise and is overtaken by events.
17. The respondent's further case is that her members were ordered to resume duty on 29th February, 2021 and also enjoy all their terms of employment but the claimant has continued to deny them these and also failed to resume union dues deductions.
18. Where does this take us? Truly, this matter and cause is overtaken by events. The issues raised in the claim were resolved by this court's management of the strike and eventual labour Relations crisis. The situation on the shop floor was and remains calm as we speak.
19. Again, the claimant has not demonstrated that indeed the Respondent's members involved in an illegal strike. This remains a mere allegation. I therefore find that the claimant is not entitled to the relief sought and hold as such.
20. The 2nd issue for determination is whether the respondent is entitled to the counter claim. She has ably set out a case of claimant's default in meeting her part of the bargain after her members resumed work from 29th February, 2021. The claimant cavalier denial of the Respondent's members entitlements is not denied. I therefore find that the respondent is entitled to the counter claim as set out.
21. I am therefore inclined to dismiss the claim and allow the counter claim as follows;
- i. The respondent/claimant (Meru County Government) be and is hereby directed to pay the unpaid salaries to the members of the union respondent/claimant not paid from January 2021 to April, 2021.
 - ii. An order be and is hereby issued quashing the transfer of the nursing officers as per the respondent/claimant list of documents marked as TK-3 in the Respondent/claimant list of documents.



- iii. An order be and is hereby issued directing the claimant (Meru County Government) to pay the undedicated trade union dues from union members amounting to Kshs.1,143,996.00 from public resources/own funds for the months of January and February 2021.
- iv. An order be and is hereby issued directing the respondent/claimant to meet and pay members of the union who were transferred more than 40 kilometers transfer allowance equivalent to their one month basic salary.
- v. An order be and is hereby issued directing the respondent/claimant to meet and pay the transferred members of the union baggage and transport allowance as per the guidelines of the department of transport Meru county government.
- vi. That each party bears their costs of the claim and counter-claim.

DATED AND DELIVERED AT NYERI THIS 2ND DAY OF NOVEMBER, 2022.

D.K.NJAGI MARETE

JUDGE

Appearances

Mr. Karanja instructed by Mwirigi Kaburu & Company Advocates for the Claimant.

Mr. Kinoti for the Claimant Union

