



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT KISUMU

PETITION NO. E009 OF 2020

**IN THE MATTER OF: ARTICLES 41(2)(d), 24(1) & (5),
36, 37, 41 AND 43 OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF: ALLEGED VIOLATION AND/OR THREATENED
VIOLATION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF INDIVIDUAL
AS ENSHRINED UNDER ARTICLES 36, 40 AND 47 OF THE CONSTITUTION**

BETWEEN

KENYA MEDICAL PRACTITIONERS, PHARMACISTS AND DENTISTS UNION.....PETITIONER

VERSUS

COUNTY GOVERNMENT OF MIGORI.....RESPONDENT

JUDGMENT

1. The Kenya Medical Practitioners, Pharmacists and Dentists Union (the Union) and the County Government of Migori (Respondent) entered into a collective bargaining agreement effective 1 July 2017.
2. The collective agreement provided at clause E for the formation of an Implementation and Monitoring Committee which was supposed to meet quarterly.
3. Sometime in January 2019, the Union issued a strike notice on the ground that the Respondent had breached the collective agreement.
4. The parties appear to have met and reached consensus. On 9 April 2019, the Union issued another strike notice on the ground that the Respondent had reneged on its commitments.
5. On 7 February 2020, the Union wrote to the Respondent complaining that the Committee had failed to meet as required. The Union wrote a similar letter to the Respondent on 1 September 2020.
6. Around 22 October 2020, the Union wrote to the Respondent demanding the provision of NHIF comprehensive medical cover and payment of delayed September 2020 salaries.
7. The Respondent did not reply to the letters.
8. On 9 November 2020, the Respondent issued an ultimatum to Dr Joseph Otieno, Dr Joyce Nganga, Dr Otiyo Edwin Odhiambo and Dr Kibira Michael Kibisu to resume duty by 23 October 2020 or risk stoppage of their salaries. The reason for the ultimatum was alleged *abscondment* of duty.
9. On 25 November 2020, the Union moved the Court alleging that the Respondent had failed to show good faith on the implementation of the collective agreement.

10. The Union sought orders

(a) **THAT** a declaration be issued that the collective bargaining agreement between the County Government of Migori and the Kenya Medical Practitioners, Pharmacists and Dentists Union (KMPDU) that became effective from 1st July 2017 signed by the parties is legally binding and enforceable.

(b) **THAT** the Respondent be compelled to comply with the collective bargaining agreement between the County Government of Migori and the Kenya Medical Practitioners, Pharmacists and Dentists Union (KMPDU) that became effective from 1st July 2017.

(c) **THAT** the Respondent be condemned to pay costs of this Claim.

11. Filed together with the Petition was a Motion under a certificate of urgency seeking a prohibitory order, among other orders.

12. On 1 December 2020, the Court directed that both the Motion and Petition be taken together. The Court directed the parties to file and exchange affidavits and submissions.

13. The following were filed

(a) Respondent's replying affidavit 13 January 2021 (should have been filed and served before 11 December 2020).

(b) The Union's further affidavit and submissions on 23 December 2020 (should have been filed and served before 18 December 2020).

(c) The Respondent's submissions should have been filed and served before 31 December 2020 (not on record).

Harassment of members of the Union/protected strike

14. The Union sought in the Motion a prohibitory order restraining the Respondent from harassing and/or victimising its members and the withdrawal of the show-cause letters.

15. The issuance of a show-cause letter without more does not offend any known Constitutional or statutory right.

16. To the contrary, a show-cause letter within the employment arena is part of what is called due process as it calls upon the employee to explain why disciplinary action should not be taken. The show-cause serves to outline the allegations the employee should confront.

17. The process is part of fair labour practices as contemplated by Article 41 of the Constitution and sections 35(1) and 41 of the Employment Act, 2007.

18. The ultimatums sent to the named doctors herein requested them to resume duty as their absence was not authorised.

19. The Union appeared to suggest that the doctors could have been engaged in a protected strike.

20. If there was a lawful cause (protected strike) for the doctors not to report to work, the same was not proved.

Enforceability of the collective agreement

21. For a collective agreement to be enforceable, section 59(5) of the Labour Relations Act, 2007 requires that it be registered within 14 days of execution by the Employment and Labour Relations Court.

22. The Union did not place any evidence before the Court that the collective agreement was registered by the Court.

23. Before concluding, the Court must observe that the Union did not demonstrate that the dispute herein hinged on the violation or alleged violation of constitutional rights.

24. The dispute could as well have been presented in the normal manner as contemplated by Rule 7(3) of the Employment and Labour Relations Court (Procedure) Rules, 2016.

Conclusion and Orders

25. From the foregoing, it must be clear by now that the Petition has no merit. It is dismissed with costs to the Respondent.

Delivered through Microsoft teams, dated and signed in Kisumu on this 20th day of January 2021.

Radido Stephen, MCI Arb

Judge

Appearances

For Union Mauwa & Co. Advocates

For Respondent Sagana Biriq & Co. Advocates

Court Assistant Chrispo Aura