



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

PETITION NO. 35 OF 2020

IN TH 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

v

COUNTY GOVERNMENT OF NYAMIRA..... RESPONDENT

RULING

1. For determination is a Motion dated 17 November 2020 filed under a certificate of urgency by the Kenya Medical Practitioners, Pharmacists and Dentists Union (the Union) against the County Government of Nyamira (the County Government) seeking orders

1. ...

2. THAT the County Secretary of Nyamira be held in contempt of Court for wilful disobedience of the court order made on 27th October 2020.

3. THAT upon being held in contempt, the said officer be jailed for a period of 6 months for disobeying court orders or for such other period as this Court may deem just and appropriate.

4. IN THE ALTERNATIVE to prayer 3, this Court be pleased to mete out such punishment as it may deem appropriate to the contemnor.

5. THAT the said officer be ordered to purge the contempt.

6. THAT the Respondent herein be ordered to bear the costs of this application.

2. When the Motion was placed before the Court on 1 December 2020, it directed that it be served upon the County Government for further orders on 10 December 2020.

3. On the same day, the County Government filed a Motion seeking stay of execution of a Ruling which had been delivered on 27 October 2020 (the application is still pending).

4. On 10 December 2020, the Court directed the parties to file and exchange affidavits and submissions. The County Government's response to the application was not on record by the agreed timeline of 18 December 2020.

5. The Union's submissions were filed on 23 December 2020. The delivery of the Ruling aborted on 27 January 2021 to allow the Court look at the Respondents submissions. They were not on file by yesterday.
6. The Court has considered the Motion, affidavit(s) and submissions on record.
7. In advancing the contempt application, the Union asserted that on 27 October 2020, the Court delivered a Ruling which was served upon the County Government but it had declined to comply with the orders therein.
8. The Court has looked at the Ruling. Two substantive orders were granted therein, to wit
 - (a) The Respondent is prohibited by section 79(2) and (3) of the Labour Relations Act from taking any punitive measures against the members of the Petitioner in any manner not permitted by the Labour Relations Act 2007 for engaging in a lawful strike the Petitioner having *prima facie* complied with the procedural requirements before calling the strike action and a conservatory prohibitive order is issued pending the hearing and determination of the Petition accordingly.
 - (b) The Respondent is meanwhile directed to honour the agreement entered into by the parties and the subject of the communique by the Respondent dated 10th August 2020 by promoting all concerned doctors and health personnel including payment of agreed arrears of salaries in terms of the CBA.
9. Despite asserting that the County Government had not complied with the terms of the Ruling, the Union did exhibit to the Motion any evidence demonstrating the punitive measures the County Government had taken after 27 October 2020. Even the names of those against whom the punitive measures had been taken and the nature of the measures was not revealed.
10. On the second limb of the orders, the Court directed the County Government to give effect to a communique dated 10 August 2020 on promotion of doctors. However, no single affidavit was filed from any of the affected doctors.
11. To the contrary, there is evidence attached in an affidavit filed in Court on 9 October 2020 that some 27 doctors had been promoted after the communique.
12. It appears that the Union did not give much thought to the legal threshold for a finding of contempt otherwise it would have presented sufficient evidence of the alleged contempt.
13. Regrettably, the Court finds no merit in the Motion dated 17 November 2020 and it is dismissed with costs.

Delivered through Microsoft teams, dated and signed in Kisumu on this 3rd day of February 2021.

Radido Stephen, MCI Arb

Judge

Appearances

For the Union	Mauwa & Co. Advocates
For Respondent	Nyachiro Nyagaka & Co. Advocates
Court Assistant	Chrispo Aura