



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**AT ELDORET**

**COURT NAME: ELDORET LAW COURT**

**CASE NUMBER: ELRCPET/4/2020**

**CITATION: KMPDU VS COUNTY GOVT OF UASIN GISHU**

**RULING**

ON 2021-07-02 BEFORE HON. JUSTICE J. N. ABUODHA

1. The Motion dated 25th August, 2020 sought orders among others that:

i. THAT pending the hearing and determination of this Application Interpartes, this Honourable court be pleased to declare the strike called by the Petitioner in its strike Noticed dated 10.8.2020 lawful and therefore protected if the Respondent will not have fully complied, addressed and/or Implemented the Collective Bargaining Agreement between the Respondent and the Petitioner that became effective on 1.7.2017 and registered under RCA 233 of 233 of 2017 , Return to Work Formula of 14.3.2017 the Scheme of Service between the Petitioner and the Respondent and the contents of the strike notice dated 10.8.2020 and/or Petitioner's concerns and grievances therein before 8.9.2020 when the strike notice issued by the Petitioner expires.

ii. THAT this Honourable court be pleased to grant the Petitioner leave to amend its Petition as per the annexed petition and the notice of motion application thereof.

2. The Motion was supported by the Affidavit of Daniel Lawrence Were Advocate who stated among others that:

i. THAT I am an advocate of the High Court of Kenya practicing as such in the firm of M/s D.L Were Company Advocates which firm is in conduct of this suit on behalf of the Petitioner hence competent to make and swear this affidavit.

ii. THAT the Petitioner filed the herein petition on 12.3.2020 under certificates of urgency and this Honourable court fixed same for mention on 17.3.2020 for the Respondent to show cause why the interlocutory orders should not be granted.

iii. THAT however, on 17.3.2020 this Honourable court did not sit due to the National /International Corona Virus Covid 19 Pandemic.

iv. THAT on 19.3.2020 the petition was fixed in the registry for mention on 22.4.2020 for directions on which date the court did not sit and thus directions were not given due to the National and International Corona Virus Covid 19 Pandemic.

v. THAT because of Corona Virus covid 19 Pandemic the Petitioner called off the Doctor's strike that had been scheduled to commence on 18.3.2020 to enable them as essential service providers to attend to the victims and/or the health situation in the country as it demanded.

vi. THAT the Petitioner has issued to the Respondent another strike notice of twenty-one (21) days commencing 10.8.2020 with a concomitant effect of the petitioner's members who are Doctor's and/or medics downing their tools starting midnight of 8.9.2020.

vii. THAT the Respondent has not addressed the Petitioner's concerns and/or grievances which were the basis of the earlier strike that was to commence on 18.3.2020 and the respondent continues to inure and grieve the petitioner to date.

viii. THAT it is the respondent's failure to address the Petitioner's earlier grievance and/or concerns plus Petitioner's additional, current and/or new concerns and grievances against the Respondent that has led to the petitioner issuing the strike notice of 10.8.2020.

ix. THAT the basis and or gist of the herein petition was to avert the strike that had been scheduled to commence on 18.3.2020 by compelling the respondent to address the petitioner's concerns and/or grievances so that the petitioner members provision of essential services of health to the members of public is not comprised and/or interrupted.

x. THAT on strike notice having been issued on 10.8.2020 there is a high likelihood that if the Respondent is not compelled in the interim to address the Petitioner's concerns and/or grievances then the members of the petitioner will proceed on strike hence denying members of public access to health services at their detriment.

xi. THAT downing of tools by members of the petitioner who are medics, health workers and /or front-line essential service providers will cripple access to health services by members of the public, a scenario that will be fatal and catastrophic to the entire Respondent's County especially at this time of Corona Virus National and International Pandemic.

xii. THAT if the respondent is not compelled to address the Petitioner's concerns and/or grievances before the midnight of 8.9.2020 when the strike is scheduled to commence and the members of the Petitioner proceed on strike by downing their tools, the petitioner's members will be unjustly, unfairly, unlawfully and wrongfully victimized by all and sundry including the respondent on false and/or misleading assumptions and propaganda that the petitioners members have acted unprofessionally in neglect of their duty and without giving due attention to the interest of members of the public.

xiii. THAT it is therefore what that the herein petition be accordingly amended in order to bring on board incorporate and/or capture therein the new strike notice dated 10.8.2020 petitioner's additional, new and/or current concerns and /or grievances contained in the said new strike notice of 10.8.2020 together with the taking cognizance of the fact that the Petitioner's members will down their tools on the midnight of 8.9.2020 if their grievances and/or concerns would not have been addressed by the Respondent hence denying members of the public access to health services at their detriment .

xiv. THAT it is of utmost import to amend the herein pleadings in order to meet the ends of justice and fairness.

xv. THAT this amendment will also assist this Honourable court to adequately and constructively determine the real and current matters and /or issues in dispute herein.

xvi. THAT the grant of the orders sought shall further enable this Honourable court to effectively and completely adjudicate upon and settle all questions involved in the petition herein.

3. The respondent filed a Preliminary Objection to the Motion in which it stated among others that:

i. THAT the Petitioner's Application dated 25th August,2020 offends the provision of Order 18 Rule 3 of the Civil Procedure Rules, which Rules requires Affidavits to be deponed by the Applicant as the same deals with matters of facts.

ii. THAT the Supporting Affidavit to the Application dated 25th August, 2020 has been deponed by an Advocate that is Mr. Daniel Lawrence Were, who is on record for the Petitioner/Applicant.

iii. THAT Petitioner 's/Applicant Application dated 25th August, 2020 is incurably defective and untenable in Law.

4. When the matter came before me on 2nd June, 2021 Mr. Were for the Petitioners contended that the Objections was merely intended to delay the matter. According to Ms Nasiloli for the Petitioners, the PO was on the Affidavit in support of the Motion which she contended was defective since the facts in it were deponed to by the advocate for the Petitioners and not the Petitioners themselves.

5. The Court as directed on 2nd June, 2021 has reviewed and considered the application dated 25th August, 2020 and the Preliminary Objection raised by the respondent and takes the view that the depositions by Counsel for the Petitioners were matters within his knowledge based on instructions received as Counsel besides the Affidavit was in support of the prayers among others to amend the Petitioners to bring all matters in controversy before the Court for determination. The Court therefore finds the PO without merit and hereby disallows the same.

6. Concerning the Orders sought in the Motion dated 25th August, 2020 the Court is being asked among others to issue a declaration that the strike called by the Petitioner through a notice dated 10th August, 2020 was lawful and protected.

7. The right to go on strike is provided for in the Constitution. Further, the Labour Relations Act makes provisions for steps to be taken before a strike is called. It would be therefore inappropriate for the Court to issue the declaration sought at the interlocutory stage. A declaration of legality or otherwise of an industrial action such as a strike is a conclusion derived from facts as presented before the Court. This is the substance of the Petitioner which the Petitions were intends to amend.

It would therefore be premature to issue the declaration sought at the interlocutory stage.

8. Concerning the leave to amend, this prayer will be allowed and the Petitioner granted leave to amend and serve the amended petition on the respondent within 14 days of this ruling with a corresponding leave to the respondent to amend the response or file a supplementary response within 14 days of service.

9. Either party shall have the liberty to apply for further directions.

10. It is so ordered.

**DATED AT ELDORET THIS 1ST DAY OF OCTOBER, 2021**

**DELIVERED AT ELDORET THIS 1ST DAY OF OCTOBER, 2021**

GIVEN under my hand and Seal of this Court on 2021-10-03 12:16:33

SIGNED BY: HON. JUSTICE J. N. ABUODHA (ADMINISTER JUSTICE)

THE JUDICIARY OF KENYA.

ELDORET ELRC

EMPLOYMENT AND LABOUR RELATIONS COURT

DATE: 2021-10-03 12:16:33