

Kenya National Union of Nurses



For Unity, Protection & Empowerment

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Website: [http:// www.knun.org](http://www.knun.org)
Official Forum: www.knun.org/forum
Registered Trade Union (Reg. No. TU / 169)

REF: NBI/KNUN/MTRH.13/425/17

16th August 2017

The Chief Executive Officer
Moi Teaching & Referral Hospital
P.O Box 3-300100
Eldoret.

Dear Sir,

RE: NOTICE TO SUSPEND THE STRIKE.

This is pursuant to a Strike Notice REF:NBI/KNUN/MTRH.7/267/17 dated 24th May 2017 which was issued to demand the registration and implementation of the signed Collective Bargaining Agreement.

In view of the court Order of 30th May 2017 and pursuant to the legal advice by the Union lawyer dated 15th August 2017 (**copy attached**) **I wish to, and do hereby Suspend the Strike** with immediate effect pending the determination of the case before the court.

By a copy of this letter, I wish to direct the Branch Secretary to inform our members of this development so that they can continue offering services and remain on duty as the issues are addressed by the court to conclusion.

Thank you.

Yours Faithfully,

SETH PANYAKO
GENERAL SECRETARY



ESHIWANI ASHUBWE & COMPANY ADVOCATES

Commissioners for Oaths and Notaries Public



15th August, 2017

The General Secretary,
Kenya National Union of Nurses
Uchumi House, 14th Floor
P.O. Box 56900-00200
NAIROBI

Dear Sir,

RE; ELRC NUMBER 987 OF 2017- MTRH VERSUS KNUN

We refer to the above matter in which you have instructed us to represent you.

Attached to this letter is a legal opinion for you to read and give it a thought.

Yours faithfully

FOR; ESHIWANI ASHUBWE & COMPANY ADVOCATES

N/P. Ashubwe
Advocate

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REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 987 OF 2017

IN THE MATTER OF *UNLAWFUL AND UNPROTECTED STRIKE*
COMMENCING 1/6/2017

ISSUED BY THE RESPONDENT UNION

AND

IN THE MATTER OF SECTION 81(3) OF THE LABOUR RELATIONS ACT
2007

AND

IN THE MATTER OF FOURTH SCHEDULE OF THE LABOUR RELATIONS
ACT 2007

BETWEEN

MOI TEACHING & REFERRAL HOSPITAL.....CLAIMANT

VS

KENYA NATIONAL UNION OF NURSES.....RESPONDENT

LEGAL OPINION

BACKGROUND

The Respondent Union issued a strike notice to take effect on the 1st of June 2017. Nurses of the Claimant Hospital went on strike. This prompted the Claimant hospital to file a suit. They obtained orders from the court on the 30/ 5/2017 prohibiting the nurses in this suit from participating in the strike.

Following the failure of the Union to call off the strike as per the Court Orders of 30/5/2017, the Claimant filed Contempt of Court proceedings and the General Secretary of the Union was cited for contempt of court.

ISSUE

The issue for determination is whether the General Secretary of the Respondent Union can purge the Contempt of Court Order.

RULES

Civil contempt as an offence occurs when a person is in willful disobedience of a court order as provided for under section 4 (1) (a) of the Contempt of Court Act.

The Contempt of Court Act, 2016 (henceforth "The Act") provides at Section 28 [1] as follows;

'A person convicted of contempt of court is liable to a fine not exceeding 200,000/- or to imprisonment for a term not exceeding 6 months or to both.'

ANALYSIS

The Act defines civil contempt of court as the willful disobedience of a court order. The court ordered the Respondent Union to advise her members not to participate in the strike that was to commence on 1/6/2017. The General Secretary of the Union did not call off the strike after it commenced. This informed the Claimant to file contempt of court proceeds against the officials of the Union citing the General Secretary of the Union for Contempt of Court.

The legal implication of this is that the General Secretary of the Respondent Union disobeyed a court order.

CONCLUSION

To purge a contempt of court order requires that the General Secretary of the Union must abide by the court order by calling off the strike of MTRH nurses. Failure to do so will attract a fine, jail imprisonment of not less than 6 months or both. We therefore advise that to avoid being fined and or jailed, the General Secretary must call off the strike.

