



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI CITY

COURT NAME: MILIMANI LAW COURTS

CASE NUMBER: HCJR/E082/2024

CITATION: THE INSTITUTE FOR SOCIAL ACCOUNTABILITY AND SIASA PLACE AND 7 OTHERS  
VS JAPHET KOOME NCHEBERE AND KENYA UNION OF CLINICAL OFFICERS AND 2 OTHERS

RULING

I have considered the applicants chamber summons dated 15 April 2024 in which the applicants have invoked Articles 24, 36, 37 and 41 of the Constitution. Other Articles of the Constitution which have also been invoked are Articles 47, 238, 245 and 258. The applicants crave for leave to file a motion for judicial review reliefs. The prayers for leave have been captured in the summons as follows:

"2. Under Article 23 of the Constitution and section 11 of the Fair Administrative Actions Act, 2015, Applicants be and are given leave to apply for judicial review orders of:

(a) Prohibition restraining the Respondent, Japhet Koome Nchebere, the Inspector General of the National Police Service, or any officer subordinate to him, from enforcing Nchebere's decision of 14 April 2024 to suspend Articles 36, 37, and 41 of the Constitution by cancelling medics' right to strike and to picket peaceably and unarmed.

(b) Certiorari quashing Nchebere's decision of 14 April 2024 to suspend Articles 36, 37, and 41 of the Constitution by cancelling medics' right to strike and to picket peaceably and unarmed.

(c) A declaration that the Inspector General of National Police Service, such as Nchebere, or other superior officer are personally liable under the doctrine of command responsibility for:

(i) issuing unconstitutional orders and directives to officers under their command to use unlawful force to disperse peaceable and unarmed strikes, assemblies, protests, and pickets under Articles 36, 37, and 41 of the Constitution.

(ii) abdicating effective control of police officers under their command by failing to investigate and discipline officers who violate the Constitution by using unlawful force to disperse peaceable and unarmed strikes, assemblies, protests, and pickets contrary to Articles 36, 37, and 41 of the Constitution.

(d) A structural interdict or supervisory mandamus be and is issued directing the Respondent to investigate and to discipline police officers who have violated the Constitution, by using unlawful force, to disperse peaceable and unarmed strikes, assemblies, protests, and pickets by the medics contrary to Articles 36, 37, and 41 of the Constitution.

(i) The investigation to include the OCPD of Capitol Hill Police Station and any other officer culpable for using unlawful force against Dr Davji Atela and other medics at a peaceable and unarmed strike, assembly, protest, or picket on 29 February 2024 at Afya House.

(ii) The Respondent be and is ordered to publish, in a newspaper of national circulation within 14



days of this order, an apology to Dr Davji Atela for the violation of his rights by the police.

(iii) The court further orders the Respondent to file an affidavit within 30 days of the court's order, outlining his steps to comply.

(e) The Respondent, from his personal funds, pays Dr Davji Atela, compensation in the form of general damages (under Article 23 of the Constitution and section 7(1)(j) of the FAA) for violating his rights while using unlawful force, to disperse the peaceable and unarmed picket at Afya House, Nairobi on 29 February 2024.

(f) A costs order requiring the Respondent to pay, from his personal funds, the costs of this litigation, to deter his future attempts to suspend Articles 36, 37, and 41 of the Constitution or his use or authorisation of the use of unlawful force, to disperse peaceable and unarmed strikes, assemblies, protests, and pickets contrary to Articles 36, 37, and 41 of the Constitution.

3. Grant of leave to operate as stay restraining the Respondent, Japhet Koome Nchebere, the Inspector General of the National Police Service, or any officer subordinate to him, from enforcing the Inspector General's decision of 14 April 2024 to suspend Articles 36, 37, and 41 of the Constitution by cancelling, disrupting, or interfering in any way with the medics' right to strike, assemble, protest, or picket while peaceable and unarmed."

Based on the reasons given in the certificate of urgency, I am satisfied that the application is urgent and it is so certified. I am also satisfied that, upon cursory consideration of the applicants' application, the applicants deserve leave to file a substantive motion for judicial review reliefs. Leave is, therefore, hereby granted for the applicants to pursue the reliefs in terms of prayers 2(a), (b), (c), (d), (e) and (f) of the summons. Pending the determination of the question whether the applicants' right, under Article 37 of the Constitution, to assemble, to demonstrate and picket and to present petitions to public authorities, leave granted shall operate as stay of actions of the respondent more particularly in terms described in prayer 3 of the summons.

The directions with respect to the filing and disposal of the substantive motion are as follows:

1. The motion shall be filed and served within seven days of the date of this ruling.
  2. The respondent and interested parties shall file and serve their responses to the motion within seven days of the date of service of the applicants' motion.
  3. Directions on the manner of disposal of the motion shall be given on 30 April 2024.
- It is so ordered.

SIGNED BY: HON JUSTICE JAIRUS NGAAH



THE JUDICIARY OF KENYA.  
MILIMANI HIGH COURT  
HIGH COURT JUDICIAL REVIEW  
DATE: 2024-04-16 18:01:43+03

