



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL CASE NO. 119 OF 2015**

**ASSOCIATION OF KENYA MEDICAL**

**LABORATORY SCIENTIFIC OFFICERS.....1<sup>ST</sup> PLAINTIFF**

**MOSES C. O. LORRE.....2<sup>ND</sup> PLAINTIFF**

**DANIEL SANGA.....3<sup>RD</sup> PLAINTIFF**

**RAPHAEL GIKERA.....4<sup>TH</sup> PLAINTIFF**

**VERSUS**

**CABINET SECRETARY,**

**MINISTRY OF HEALTH.....1<sup>ST</sup> DEFENDANT**

**ABEL O. ONYANGO.....2<sup>ND</sup> DEFENDANT**

**KENYA MEDICAL LABORATORY TECHNICIANS**

**& TECHNOLOGISTS BOARD.....3<sup>RD</sup> DEFENDANT**

**RULING**

1) The subject matter of this ruling is the motion dated 3<sup>rd</sup> November 2015 taken out by the 2<sup>nd</sup> and 3<sup>rd</sup> defendants/applicants in which they sought for *inter alia*: an order for review of the order issued by this court on 23<sup>rd</sup> October 2015 for temporary injunction to restrain the 2<sup>nd</sup> and 3<sup>rd</sup> defendants/applicants from conducting the affairs of the Kenya Medical Laboratory Technicians and Technologists Board the 3<sup>rd</sup> defendant. The aforesaid motion is supported by the affidavit of Abel Onyango sworn on 3<sup>rd</sup> November 2015. When served with the motion, the 2<sup>nd</sup> and 3<sup>rd</sup> defendants filed the replying affidavit of Moses Collins Onono Lorre to resist the motion. The applicants also filed the further affidavit of Abel Odhiambo Onyango in response to the replying affidavit of Moses Collins Onono Lorre.

2) When the motion came up for interpartes hearing, learned counsels recorded a consent order to have the same disposed of by written submissions. I have considered the grounds set out on the face of the motion and the facts deponed in the affidavits filed in support and against the application. Pursuant to the motion dated 23<sup>rd</sup> October 2015, this court issued a temporary order of injunction to restrain the defendants by themselves, their agents, servants and or employees from conducting the affairs of the Kenya Medical Laboratory technicians and Technologists Board hereinafter referred to as the 'Board'

pending the hearing and determination of this suit. The Board established pursuant to Section 3 of the Medical Laboratory Technicians and Technologists Act, Cap 253A Laws of Kenya as a body corporate to exercise the general supervision and control over the training, business, practice and employment of Laboratory Technicians and technologists in Kenya. Under Section 6 of Cap 253A, the maximum membership of the Board is fixed at 19 persons but the quorum required to conduct the business of the board is fixed at 11 members.

3) The Act also ensures that a vacancy in the membership of the Board does not render the board inoperative by providing that proceedings shall not be invalidated by reason only of a vacancy among the board's membership.

4) The 2<sup>nd</sup> and 3<sup>rd</sup> defendant's motion is based on three grounds.

First, the discovery of a new matter and or evidence which after the exercise of due diligence was not within the knowledge of the applicants at the time of making the orders issued on 23<sup>rd</sup> October 2015.

Secondly, a mistake and or error apparent on the face of record.

Thirdly, that there is sufficient reason necessitating issuance of orders of review.

5) It is the submission of the 2<sup>nd</sup> and 3<sup>rd</sup> applicants that unless the orders of injunction issued by this court on 23<sup>rd</sup> October 2015 are reviewed all Medical Laboratory Technicians and Technologists students risk not sitting for their examinations and their careers will stall since the 3<sup>rd</sup> defendant will be unable to conduct any examinations. It is also argued that the 3<sup>rd</sup> respondent inspects all training institutions throughout Kenya to ensure standards in training are adhered to and unless the orders are reviewed the quality of healthcare, training will be compromised. The applicants also submitted that the board conducts regular inspection of Medical Laboratories throughout the republic to ensure that such facilities conduct their business and practice in strict adherence to the law and those found wanting are prosecuted and closed, therefore unless this court's orders are reviewed the prosecution of those cases will stall since the officers of the board are restrained from conducting the affairs of the board. It is also argued that due to the existence of the court orders, the board will not be in a position to honour the terms and conditions of employment of its staff who then stand the risk of losing their jobs.

6) The applicants have also pointed out that they have now discovered that the list of office bearers kept by the Registrar of Societies shows that the 1<sup>st</sup> plaintiff filed its returns on 31.12.2012 and the name of the 2<sup>nd</sup> plaintiff was not listed as the National executive chairman.

7) It was pointed out that material facts were misrepresented to this court. It is also stated that neither the names of the 2<sup>nd</sup> and 4<sup>th</sup> plaintiffs appear amongst the listed officials of the 1<sup>st</sup> plaintiff. The applicants aver that this is a new and important matter which show that the 2<sup>nd</sup>s and 4<sup>th</sup> plaintiffs had no capacity whatsoever to file this suit.

8) The applicants have further argued that there is mistake apparent on the face of record to the extent that the suit has been instituted by the society as the 1<sup>st</sup> plaintiff without the legal capacity to do so as a non-juristic person, the proceedings are nullity and incompetent *ab initio* and therefore the orders issued on 23.10.20-15 should not have been granted.

9) The plaintiffs/respondents on the other hand have argued that the motion for review lacks merit. It is stated that the applicants have failed to demonstrate the discovery of a new and important matter.

10) The respondents have also argued that the 1<sup>st</sup> plaintiff filed this suit through its elected officials and therefore there is no error apparent on record.

11) Having considered the material placed before this court and the rival submissions, I have come to the conclusion that the applicants' application is well founded. It is apparent that at the time of filing this suit, the 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs herein were not the listed officials of the 1<sup>st</sup> plaintiff with the Registrar or societies. In my view this is a very important matter which goes to the foundation of this suit. If it is true that the aforesaid respondents were not the recognised officials of the 1<sup>st</sup> plaintiff, then they had no capacity to file this suit and therefore they were not entitled to obtain orders. By inference, the issue can be regarded as an error on the face of record. In other words the court entertained parties who had no capacity to institute the suit.

12) In the end, I find the motion dated 3.11.2015 to be meritorious.

It is allowed as prayed.

Dated and delivered in open court this 24<sup>th</sup> day of November, 2017.

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Plaintiff

.....for the Defendant