



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW MISCELLANEOUS CAUSE NO. 450 OF 2016

IN THE MATTER OF AN APPLICATION BY RUTH NJOKI WATITU & MARTIN NGARI FOR LEAVE TO APPLY FOR JUDICIAL REVIEW ORDERS OF PROHIBITION AND MANDAMUS

AND

IN THE MATTER OF SECTIONS 8 & 9 OF THE LAW REFORM ACT CAP 26

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA 2010 ARTICLES 10,19,20,21,22,23,41,47,48,& 165

AND

IN THE MATTER OF THE NATIONAL HOSPITAL INSURANCE FUND ACT CAP 455

BETWEEN

1. RUTH NJOKI WATITU

2. MARTIN NGARI.....APPLICANTS

VERSUS

1. THE PRINCIPAL SECRETARY FOR HEALTH]

2. NATIONAL HOSPITAL INSURANCE FUND

BOARD OF MANAGEMENT]RESPONDENTS

RULING

I have considered the chamber summons dated 26th September 2016, under certificate of urgency. I certify it as urgent.

On the merits of the chamber summons which seeks for leave to apply for Review Order of prohibition and mandamus, I note that the letter Annexure RNW1 which is the subject of these proceedings, in the last paragraph thereof is clear that the applicants as employees of the 2nd respondent are being called

upon, on account of a complaint, to respond in writing, fully responding to the issues raised in the complaint letter which was attached, from Yano & Company Advocates, on behalf of their clients Elizabeth Mwihaki Nganga.

The employer's letter also calls upon the applicants to show because why management should not take disciplinary action against the applicants.

On the other hand, the applicants in their application for leave to apply claim that the employer, 2nd respondent is threatening to take disciplinary proceedings or suspension or interdiction or otherwise acting in any way prejudicial to the applicant's employment when Kajiado CMCC488/2016 and HC Misc. Application 32/2016 are pending.

I have examined those two cases pending in court. I note that the respondents herein are not parties to those suits, which concern the running of the Hospital Care Givers Community Hospital, Isinya.

I have also perused the letter dated 16th September 2016 which is a reaction to the letter dated 7th September 2016 from Yano and Company Advocates.

In my humble view, as the complaint relates to an allegation against an employee(s) of the 2nd respondent getting involved in the affairs of a hospital which is a beneficiary of NHIF funding, and with evidence from bank statements of the said hospital showing that on 12th August 2016 the 1st applicant herein withdrew shs 200,000 twice on each of those two occasions from that hospital account with Equity Bank A/C No, [particulars withheld], the only way to deal with that issue is by way of the employer seeking out the employee to give an account of what lies in the complaint, which, in my humble view, is clearly set out in the employer's letter dated 16th September 2016.

In my view, the applicants are running away from being asked by their employer to explain their dealings with the said hospital. What the applicant have stated in their affidavits in support and the statutory statements can very well serve as their explanation or show cause before the employer, which has in my view, in asking the applicants to show cause, has not breached any rules of natural justice in according the applicants an opportunity to be heard on the complaint against them.

I do not find any prejudice to the applicants if they explain themselves to their employer on the issues raised. Neither do I find that the subjudice rule applies to these proceedings since there is nothing on record to show that the applicants disclosed to their employer that they are embroiled in a legal dispute over management of the Care Givers Community Hospital, Isinya.

In addition, although the 1st applicant claims that she is a mere signatory to the account as a friend to Regina Nganga, and that she is not involved in the affairs of the hospital and or as a beneficiary thereof, her own exhibits which include the bank statement with Equity Bank betrays her at it shows that she is the beneficiary of shs 200,000 withdrawn on 12th August 2016 and she has not explained in her affidavit or statutory statement how she became a beneficiary thereof if she is not involved in the running of the said hospital affairs.

Accordingly I find that the application herein does not raise an arguable prima facie case against the respondents to warrant leave to apply for Judicial Review Orders which are discretionary in nature. The same is premature and is dismissed with no orders as to costs.

Orders accordingly.

R.E. ABURILI

JUDGE

27/9/2016