



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL CASE NO. 6 OF 2000**

**DR. ONDEGO CHARLES**

**& 208 OTHERS.....PLAINTIFF**

**VERSUS**

**KENYATTA NATIONAL HOSPITAL.....DEFENDANT**

**RULING**

This is the preliminary objection to the plaintiffs amended application dated 4.1.2000 and the Splaintiffs suit as amended. Mr. Mwenda, learned Counsel for the respondent, argued two grounds as preliminary objection namely that: 1. The court lacks jurisdiction to entertain entire suit as brought 2. .... 3. ....plaintiffs have no locus standi to institute the proceedings against the defendant.

The plaintiffs are 209 Doctors doing a Post Graduate course with the University of Nairobi. Some of them are employed by Kenyatta National Hospital and have been sponsored for the post graduate course by Kenyatta National Hospital in the University of Nairobi. Kenyatta National Hospital is a state Corporation ran by a Board. By section 2(2) of the legal Notice No. 109 of 1987, Board members include the principal of the college of Health Sciences of the University of Nairobi and principal of the College of Health professors. Some of the functions of Kenyatta National Hospital is to provide facilities for medical education for the University of Nairobi and for research either directly or through Co-operating health institutions.

Plaintiffs by the plaint, generally complain that Kenyatta National Hospital has extended administrative control over them instead of merely providing facilities for their post graduate training. They complain, inter alia, that defendant has interfered with their academic calendar by making them work for long hours without pay including during University holidays; and that defendant has threatened to interfere with their accommodations arrangements. It appears from para 10 of the plaint that this dispute was precipitated by the plaintiffs leaving Kenyatta National Hospital on 17.12.99 and going on Christmas Holidays They complain that, as a result, the hospital has threatened to discontinue offering teaching facilities; to evict them from their houses, to take disciplinary action against them and to write to plaintiffs sponsors directing them to discontinue plaintiffs allowances.

Relief's sought in the plaint include an order of injuntion to restrain the Hospital denying plaintiffs access to learning facilities, taking disciplinary action and from forcing plaintiffs to work in the hospital's departments without legal authority from the University.

The same orders of injuntion are sought in the application.

I have studied the long replying affidavit of Dr. A.K. Muita, Director of Kenyatta Hospital and the several documents he has annexed to the affidavit. I have also studied the replying affidavit of Dr. Kavoo Kilonzo sworn on 19.1.2000. I note the plaintiffs grievances in paragraph 9 of Dr. Kilonzo's affidavit

that;

(i) Defendant has turned the applicants into slaves (ii) Applicants have been compelled to put extra hours of work (ii) Defendant has turned applicants into workers without pay. Dr. Kilonzo concedes that 55% of the applicants are employees of Ministry of Health and that 45% of the applicants were previously practicing doctors and others who came from other countries. Dr Kilonzo also admits that Kenyatta National Hospital has no obligation to house applicants.

From the minutes of the meeting of 23.6.97 and 25.6.97, it is clear that the grievances that plaintiff are making against the defendants have been discussed in meetings between, Dean Faculty of Medicine (University of Nairobi); Kenyatta National Hospital, Ministry of Health and Board of Post Graduate Studies. In the meeting of 25.6.97, it was recognized that plaintiffs are apprentices and cannot therefore demand that they should work only on normal office hours; issue of proceeding on recess does not arise within the context of medical school and Kenyatta National Hospital; issue of work load may be resolved by Kenyatta National Hospital but may be to the detriment of the students training due to reduced exposure; students are covered by University Health Services for out patient treatment.

After the plaintiffs abandoned the clinical programme on 17.12.99 the College Academic Board of the University of Nairobi held a meeting on 20.12.99 and resolved that plaintiffs grievances be handled through Universities College of Health Sciences and directed plaintiffs to resume normal learning's. The applicant responded by a letter dated 21.12.99 - they wanted to know their normal academic duties. By their letter dated 23.11.99, applicants were demanding salary of shs 28,8000 per student. By a letter date 29.12.99 the Ministry of Health gave guidelines regarding the post graduate Doctors employed by Ministry of Health and directed, inter alia; that when University of Nairobi goes on recess, the post graduate doctors employed by Ministry of Health are expected to continue working except when granted normal annual leave.

All considered, it is apparent that, in essence, the dispute brought by plaintiff is about the administration of the post graduate programme of Iniversity of Nairobi at Kenyatta National Hospital. Plaintiffs are attached to the hospital as apprentices but they complain of heavy workload without pay, strict supervision by hospital, housing problems, transport problems, academic calendar, hours of apprenticeship, insurance etc. The 55% of plaintiff who are employed by Ministry of Health are governed by their contract of employment and the requirements of the post graduate programme It is the University of Nairobi which has designed the post graduate programme. As the minutes of 25.6.97 noted, it is the University of Nairobi which is supposed to interpret the Clinical training and what is involved. Again, as the meeting of 25.6.99 noted, the students are responsible to the University of Nairobi during the duration of their training but this is responsibility is re-delegated to the institutions where University makes contractual arrangements for training facilities.

As the minutes show, the administration of the post graduate programme involves he Ministry of Health, University of Nairobi Kenyatta National Hospital and Board of Post Graduate Studies. The Ministry is a board member of Kenyatta Hospital Board The four parties involved have been discussing the plaintiffs grievances and suggested solution to each problem.

From the foregoing, I have come to the conclusion that this is a domestic dispute which should be resolved by the relevant institutions. The court would be usurping the powers of the University of Nairobi; Ministry of Health, Kenyatta National Hospital and Board of Postgraduate studies if it were to intervene in this dispute. The court is not even competent to do. It is incapable of offering interpretation of the clinical training and what it involves. It has no resources to design an acceptable post graduate clinical training programme at Kenya National Hospital. The court has no jurisdiction to interfere with internal affairs of either Kenyatta National Hospital or of the University of Nairobi. The dispute brought to court is not justiciable.

The plaintiffs are at Kenyatta National Hospital by virtue of their attachment there by the University of Nairobi. It is the University which is supposed to dictate how the clinical training programme should be ran. It is the University which has signed a memorandum of understanding with Kenyatta National

Hospital.

It is only the University which can enforce the memorandum, if it is enforceable at all, against the Hospital. The post graduate students as apprentices at the hospital have no independent enforceable rights against the Hospital. They can only enforce any rights through the University.

Kenyatta National Hospital justifiably argues that it cannot let plaintiffs to adopt walk-in-walk-out attitude at the hospital as ethical questions are involved. Certainly, a well coordinated apprenticeship programme has to be enforced otherwise the daily operation of the hospital will be disrupted to the detriment of the patients. I am saying that plaintiffs have no locus standi to sue the defendant.

I therefore agree that this court has no jurisdiction to entertain the suit and application and that plaintiffs have no locus standi to sue the defendant in their capacity as post graduate students at the University of Nairobi.

I uphold the preliminary objection and strike out the application and the suit with costs to the defendant

E.M. Githinji

Judge

17.2.2000

Mr. Siagi for plaintiffs present

Mr. Mwenda for Defendant present

Mrs Madahana - State Counsel present

Mr. Mwenda

I apply for certified copy of the Ruling.

Order: Ruling to be typed and copy supplied as prayed.

E. M. Githinji

Judge