



**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**

**V E R S U S**

**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 plaintiff instituted suit against the defendants accusing them of rejecting names of elected board members without any justifiable reason and further for illegally and irregularly purporting to review the procedure for the election of the association members to the board. When the matter came up for hearing on 9<sup>th</sup> November 2016, Mr. Githinji for the 2<sup>nd</sup> and 3<sup>rd</sup> defendants stated that the suits as against all the defendants had been withdrawn by the 3<sup>rd</sup> and 4<sup>th</sup> plaintiffs vide the notice dated 21<sup>st</sup> December 2014. He also averred that the 1<sup>st</sup> plaintiff has withdrawn the suit as against the 2<sup>nd</sup> defendant and so has the motion dated 20<sup>th</sup> March 2015, which motion gave rise to the injunctive orders.

Mr. Ayabei counsel holding brief for Mrs Maryarki for the respondent stated that there is existing application for review which ought to be fixed for hearing.

Mr. Githinji in response requested the court to issue directions on the way forward on whether or not they really have a suit since the application and the suit have been withdrawn.

2. The question for determination here is whether the suit stands dismissed following the withdrawals by

the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> plaintiffs. This suit was instituted and filed on 26<sup>th</sup> March 2015 by 4 plaintiffs being, Association of Kenya Medical Laboratory Scientific Officers, Moses C. O. Lorre, Daniel Sanga and Raphael Gikera who appear as the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> plaintiffs as against the Cabinet secretary, Ministry of Health, Abel O. Onyango and Kenya Medical Laboratory technicians and technologists board who are listed as the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants respectively. The plaintiffs instituted the suit vide a plaint dated 20<sup>th</sup> march 2015 which plaint was accompanied with an injunctive motion application dated 20<sup>th</sup> march 2015.

3. Having perused the court record it is evident that I heard and determined the injunctive application which application I allowed prayers b and c. There are therefore injunctive orders in place as sought by all the plaintiffs on record. Given that only the 3<sup>rd</sup> and 4<sup>th</sup> plaintiffs are withdrawing the suit and application as filed against all the defendants then the court cannot stop them from doing so. However, the 1<sup>st</sup> plaintiff has only withdrawn the suit against the 2<sup>nd</sup> defendant but not against the 1<sup>st</sup> and 3<sup>rd</sup> defendants. At the same time the 2<sup>nd</sup> plaintiff has not intimated that he is willing to withdraw the suit as filed against the defendants. As such the suit cannot be said to have been fully withdrawn, and the same stands as filed by the remaining plaintiffs as against the defendants.

4. Moreover, there are injunctive orders in place at the moment. It is therefore too late to withdraw an application that had already been heard and determined, and orders issued therein which orders are still in force in favour of the plaintiffs who have not withdrawn their case as against the defendants.

5. The suit and applications as filed by the remaining parties should proceed for hearing and the respective parties should take the necessary steps to ensure they are heard.

Dated, Signed and Delivered in open court this 11<sup>th</sup> day of November, 2016.

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Plaintiff

..... for the Defendant