



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**CONSTITUTION PETITION NO 285 OF 2015**  
**THE KENYA NATIONAL UNION OF NURSES .....PETITIONER**  
**VERSUS**  
**THE NURSING COUNCIL OF KENYA .....1<sup>ST</sup> RESPONDENT**  
**THE CABINET SECRETARY OF THE MINISTRY**  
**OF THE MINISTRY OF HEALTH.....2<sup>ND</sup> RESPONDENT**  
**THE HON. ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**  
**DANIEL M YUMBYA.....4<sup>TH</sup> RESPONDENT**  
**REGISTRAR, THE NURSING COUNCIL OF KENYA .....5<sup>TH</sup> RESPONDENT**

**RULING**

**Introduction**

1. The petitioner is a trade union which, according to its constitution, draws its membership from the nursing profession, both registered and enrolled nurses.
2. It has filed the present petition alleging violation of the constitutional rights of its members who are enrolled community nurses. The basis of its complaint is that enrolled nurses are discriminated against under the provisions of the Nurses Act, specifically the First Schedule and by Form B in the Second Schedule thereto, in that they are not permitted to participate in elections for the Board of the Nursing Council, the 1<sup>st</sup> respondent.
3. In the petition dated 10<sup>th</sup> July 2015, the petitioner seeks the following three prayers:
  - a. *The Honourable Court to compel the 2<sup>nd</sup> respondent to amend the Nurses Act so that it conforms with the Constitution and thereby restoring the enjoyment of the rights of the members of the petitioner which the current Nurses Act denies them, at the determination of this suit.*
  - b. *The Honourable Court to compel the 2<sup>nd</sup> respondent to include and or involve all the*

***stake holders in the nursing profession in the process of the amendment of the Nurses Act.***

***c. The Honorable Court do make such further orders as it deems just and expedient to meet the ends of justice in this case.***

4. The petition has been filed against the Nursing Council of Kenya as the 1<sup>st</sup> respondent, the Cabinet Secretary, Ministry of Health as the 2<sup>nd</sup> respondent, and the office of the Attorney General as the 3<sup>rd</sup> respondent.
5. The petitioner has also joined Dr. Daniel Yumbya, who was appointed the returning officer for the elections at issue, as the 4<sup>th</sup> respondent. The Registrar of the 1<sup>st</sup> respondent is also sued separately as the 5<sup>th</sup> respondent.
6. The petitioner has, along with the petition, filed an application for conservatory orders also dated 10<sup>th</sup> July 2015. The application is supported by the affidavit of the petitioner's Secretary General, Mr. Seth Panyako, and seeks the following orders:

***1. That this matter be certified urgent.***

***2. That the 4<sup>th</sup> respondent be barred and or stopped from counting votes on the 17<sup>th</sup> July, 2015, pronouncing, declaring and registering the winners of the elections of Board Members of the 1<sup>st</sup> respondent pending the hearing and determination of this Application.***

***3. That the 4<sup>th</sup> respondent be barred and or stopped from counting votes on the 17<sup>th</sup> July, 2015, pronouncing, declaring and registering the winners of the elections of Board Members of the 1<sup>st</sup> respondent pending the hearing and determination of this Petition.***

***4. That the purported and flawed elections of Board Members of the 1<sup>st</sup> respondent be and are hereby suspended pending the hearing and determination of this Application.***

***5. That the purported and flawed elections of Board Members of the 1<sup>st</sup> respondent be and are hereby suspended pending the hearing and determination of this Petition.***

***6. That the Honourable Court to compel the Cabinet Secretary of the Ministry of Health to urgently convene a meeting of all stakeholders in the Nursing Profession to converge with an objective of setting/formulating temporary by election rules that meet the threshold of a free, fair and transparent election process which conform with the Constitution of Kenya pending the hearing and determination of this Application.***

***7. That the Honourable Court to compel the Cabinet Secretary of the Ministry of Health to urgently convene a meeting of all stakeholders in the Nursing Profession to converge with an objective of setting/formulating temporary by election rules that meet the threshold of a free, fair and transparent election process which conform with the Constitution of Kenya pending the hearing and determination of this Application and the main Petition.***

***8. That the Honourable Court to compel the 2<sup>nd</sup> respondent to amend the Nurses Act so that it conforms with the Constitution and thereby restoring the enjoyment of the rights of the members of the Petitioner which the current Nurses Act denies them, and forwards the said Amendments to the 3<sup>rd</sup> respondent for necessary action.***

***9. That the Honourable Court be pleased to grant any other relief it may deem fit and just to grant in the circumstances pending the hearing and determination of this Application.***

**10. That the costs of this Application be in the cause.**

7. The application is premised on the following grounds:

**1. On various dates, nurses who are members of the Petitioner Union presented a formal complaint to its Union, the petitioner, about being denied an opportunity to participate in the elections of the Board Members of the 1<sup>st</sup> respondent which body is both a training and regulatory body of the nurses of ALL CADRES in Kenya.**

**2. The Petitioner Union wrote to the 5<sup>th</sup> respondent on the 4<sup>th</sup> May, 2015 seeking answers to her members' complaints among other things.**

**3. The 5<sup>th</sup> respondent failed and or neglected to respond to the complaints of the members of the petitioner and allowed the 4<sup>th</sup> respondent to send ballot papers through the Post to certain selected Registered Nurses for them to vote and post the ticked ballot papers back to the 4<sup>th</sup> respondent. The Enrolled Community Nurses are totally excluded from voting process.**

**4. The 4<sup>th</sup> respondent has scheduled the counting of votes to be carried out on the 17<sup>th</sup> July, 2015 after which he will pronounce, declare and register the winners.**

**5. The FIRST SCHEDULE and the SECOND SCHEDULE, FORM B of the Nurses Act under which the purported elections are to be held discriminates against Enrolled Community Nurses from participating in the election of Board members of the 1<sup>st</sup> respondent and yet they are regulated by and they pay retention fees to the 1<sup>st</sup> respondent.**

**6. The 4<sup>th</sup> respondent has sent out ballot papers to certain selected Registered Nurses through the post to carry out the voting exercise and post back the ticked ballot papers to him thereafter, he will single handedly pronounce, declare and register the winners.**

**7. Some ballot papers have been send to incorrect destinations thus the recipients who are eligible voters may never get them before counting of votes on 17<sup>th</sup> July, 2015. This is further rigging of the purported elections.**

**8. The 4<sup>th</sup> respondent has sent ballot papers to Bungoma County Hospital and the recipients are unknown to Bungoma County.**

**9. Some members of the petitioner who are eligible voters have not received ballot papers and they will therefore not participate in the purported elections. This is further discrimination.**

**10. Rigging of candidates in the purported elections has already taken place whereby an unqualified nominee has already been included in the ballot papers.**

**11. The whole process of the purported elections is flawed as it is not free, fair and transparent and it does not meet the standards of free and fair elections since the regulations as contained in the Nurses Act are in total violation of the Constitution.**

**12. There are no designated polling stations, no known voting date (s) and there is only one returning officer, the 4<sup>th</sup> respondent, in the whole process of the purported elections of the Board Members of the 1<sup>st</sup> respondent.**

**13. The 4<sup>th</sup> respondent has failed to avail a voters' Register for members of the petitioner to verify as provided for in Section 6 (1) of the Elections Act.**

**14. *The 4<sup>th</sup> respondent failed and or neglected to update the particulars of the Registered Nurses as voters leading to ballot papers being sent to incorrect destinations as provided for in Section 8 of Elections Act.***

8. All the respondents oppose the application. The Attorney General filed submissions dated 14<sup>th</sup> July 2015 while the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents presented their case in an affidavit sworn by the Director of Medical Services, Dr. Nicholas Muraguri, on 14<sup>th</sup> July 2014.

**Submissions by the Petitioner**

9. The petitioner, which describes itself as a duly registered trade union within the meaning of the Labour Relations Act, states that it has the mandate to file this petition on behalf of its members. It contends that enrolled nurses have raised concerns with respect to the elections to the 1<sup>st</sup> respondent. It is its submission that it has the mandate, in accordance with the provisions of Article 22 of the Constitution, to lodge the present petition on their behalf.
10. The petitioner submits that in accordance with section 9 of the Nurses Act, Cap 257 of the Laws of Kenya, the 1<sup>st</sup> respondent is in charge of the professional and disciplinary aspects of the petitioner's members, and that they pay fees to it. The petitioner draws its members from both registered and enrolled nurses who are regulated by the 1<sup>st</sup> respondent under section 9(1)(a) and 1(h) of the Nurses Act. The 4<sup>th</sup> respondent is, under section 14(1) and (2) of the Act, required to keep a register of registered nurses and a roll of enrolled nurses. The enrolled nurses also pay a retention fee under section 12 and 14(2) of the Act.
11. It is aggrieved, however, by the fact that under the First Schedule of the Nurses Act, the qualifications of persons entitled to nominate and take part in the 1<sup>st</sup> respondent's elections are listed, and they do not include enrolled community nurses. It contends that the First Schedule makes references only to registered nurses, while Form B set out in the Second Schedule provides that only a registered nurse may nominate a person for election to the 1<sup>st</sup> respondent.
12. The petitioner argues, further, that enrolled community nurses are not listed under section 12(1)(a) of the Nurses Act as persons qualified and entitled to nominate and take part in elections of the 1<sup>st</sup> respondent. It is its case therefore that the First and Second Schedule of the Nurses Act violate Article 24(1), as well as Article 27 of the Constitution as they treat enrolled nurses in a discriminatory manner.
13. In the second limb of its application, the petitioner alleges that the petitioner's members have the right to free and fair elections guaranteed under Article 38 of the Constitution. It submits that even were enrolled community nurses permitted to participate in the elections to the 1<sup>st</sup> respondent, there is violation of Article 38 of the Constitution as the elections process is flawed and is marred with irregularities which violate the rights of both enrolled and registered nurses. The basis of this contention is that the date and venue of the elections is unknown, and the manner in which the ballot papers are handled is open to rigging.
14. The petitioner also raises questions about the qualifications of some of the candidates for the elections. It submits that Regulation 8 of the Nurses Act requires that nomination papers be signed by at least 3 persons, but that one of the candidates did not meet this requirement.
15. In her submissions on behalf of the petitioner, Ms. Ashubwe submitted that the respondents were purporting to carry out elections for Board members on a date and venue not known; that through a letter dated 28<sup>th</sup> April 2015, the 1<sup>st</sup> respondent had stated that counting of votes will take place on 17<sup>th</sup> July 2015. It was her submission that the petitioner was aggrieved that a section of its members have been excluded from participating in the elections by the Nursing Act which governs the activities of both registered and enrolled nurses. Ms. Ashubwe submitted that the

petitioner is aggrieved by the provisions of the law as it currently stands in that it discriminates against the enrolled nurses, though she conceded that as the law currently stands, the respondents are doing what is lawful.

16. She prayed that the Court grants the orders sought in the petitioner's application pending the hearing and determination of the petition.

### **Submissions by the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents**

17. In his oral submissions on behalf of these respondents, Mr. Wangai relied on the affidavit of Dr. Nicholas Muraguri sworn on 14<sup>th</sup> July 2015 which deals with both the factual and legal issues raised by the petitioner.

18. In his affidavit, Dr. Muraguri notes the legal provisions establishing the 1<sup>st</sup> respondent, and the powers granted to it under the Act, which I shall revert to later in this ruling. He states that in line with its powers under the Act, the 1<sup>st</sup> respondent made the Nurses (Nominations and Elections to the Council) Regulations 2012 which provide, inter alia, for the procedure for nomination of members of the Council, appointment of the returning officer, nomination of candidates, conduct of elections and counting of votes and declaration of elected members.

19. The respondents submit that under the First Schedule, the qualifications of persons to be elected as members of the 1<sup>st</sup> respondent are provided. Candidates must, at the time of the elections, be either a registered midwife who is also a registered nurse practicing the profession as a community health nurse; a registered psychiatric/mental health nurse practicing the profession as a psychiatric/mental health nurse, or a registered general nurse practicing as a general nurse at the time of the elections.

20. Mr. Wangai submitted that the term of the current council expired on 13<sup>th</sup> July 2015. The election process commenced with the appointment of the 4<sup>th</sup> respondent as the returning officer in accordance with the regulations. He issued a notice of elections on 23<sup>rd</sup> March 2015 and confirmed the nominated candidates on 28<sup>th</sup> April 2015. The anticipation is that there will be new members of the Council by 17<sup>th</sup> July 2015.

21. Dr. Muraguri concedes in his affidavit that the petitioner wrote to the 5<sup>th</sup> respondent on 4<sup>th</sup> May 2015 seeking information on, among other things, the candidates, the manner of conducting the elections, identification of voters, and the manner of transporting ballots to and from polling stations. He avers, however, that all these are in the Nurses Act.

22. The respondents' case is therefore that the petition and the application are totally unmerited: the petitioner is neither an individual nor a nurse in any of the registers kept by the 1<sup>st</sup> respondent; nor is it a candidate nor does it qualify to participate in the elections. Their case is that the elections for the 1<sup>st</sup> respondent have been conducted faithfully following the letter and spirit of the existing law, the Nurses Act, and there is therefore no basis for granting the orders sought.

23. With regard to the amendments that the petitioner is seeking, the respondents aver that such amendments would only apply to future elections.

24. Mr. Wangai submitted that the petitioner's problem was with the law, and it was seeking the assistance of the Court to amend the law. In his view, however, that was the province of another body, the legislature. He submitted that their interest was good, but that they were in the wrong forum.

25. With respect to the argument that there was discrimination against enrolled nurses in the election process, it was Mr. Wangai's submission that the petitioner is not an enrolled nurse but a trade union; that what was before the Court is not a trade dispute; that trade disputes are supposed to be

- adjudicated in the Employment Court, and the petitioner was again in the wrong forum.
26. Mr. Wangai further argued on behalf of the respondents that a perusal of the petition showed no enrolled nurse alleging discrimination; that there was no enrolled nurse before the Court and the assumption was that all enrolled nurses are happy with the Nursing Council. In his view, the petitioner had no locus to be before the Court or to seek the orders sought.
27. Finally, Mr. Wangai observed that the application sought conservatory orders to stop the counting of votes, the culmination of a voting process that began in March 2015 and that the orders were being sought pending the hearing of the petition. It was his submission that the orders sought should have a bearing on what is anticipated from the results of the petition; and that there was no linkage between the prayers sought in the petition and the application for conservatory orders, as none was directed at the elections that the orders sought in this application were seeking to stop.
28. He submitted therefore that the public interest was against the grant of the conservatory orders, in view of the fact that the 1<sup>st</sup> respondent is a regulatory body for 30,000 nurses, involved in registering them and ensuring discipline to ensure Kenyans get proper nursing care; the Board of the 1<sup>st</sup> respondent must therefore be in place, and to stay the Board pending determination of the petition would mean that nurses would not be regulated, which in his view was untenable.
29. With regard to the claim that some candidates were unqualified, his submission was that the Minister has a role to scrutinize the persons announced as winners at section 15 and 16 of the regulations, and has the veto power with respect to the members of the Council. He prayed that the application be dismissed with costs.

### **Submissions by the Attorney General**

30. Mr. Mohamed, Learned State Counsel, submitted that there are two issues for consideration: First, whether the Court can intervene and issue conservatory orders suspending the counting and declaration of the winners of elections of members of the 1<sup>st</sup> respondent. The second was whether the Court can compel the 2<sup>nd</sup> respondent to amend the Nurses Act.
31. Mr. Mohamed submitted that there are principles established in law for the grant of conservatory orders. These are that the applicant must show a prima facie case, which has not been shown in this case. He submitted that the petitioner is complaining about the Nurses Act, but there is no illegality shown that would justify the grant of the orders. The petitioner had also not met the second principle, which is that the petition would be rendered nugatory if the orders are not granted. Counsel submitted that there must be specific real dangers, which are imminent and evident, true and actual, and should not be based on fictitious allegations. His submission was that the respondents have followed the law as it is and have not deviated from the Nurses Act in any way, or denied any member the right to participate.
32. It was his argument, finally, that the public interest principle was against the petitioner. This principle, as enunciated in the case of **Gatirau Peter Munya vs Dickson Mwenda Githinji and 2 Others SCK Petition No 2 of 2013**, requires that the public interest be considered before issuance of conservatory orders. His submission was that the respondents are public bodies mandated to perform certain functions under the law, and when the Court is invited to stop the actions of public bodies, it should not be invited casually; and no orders should issue where there is no violation of the law. In this case, the notice of the elections was issued in accordance with section 4(e) of the Nurses Act and applies to the entities set out in the law. The petitioner's members who are enrolled nurses do not fall under section 4(e) relating to the elections; and that a right that one does not have and which is denied by law cannot be said to have been violated.
33. It was his case also that the election process involved public expenditure and stopping it a day before its completion would not be prudent use of public resources.
34. With respect to the second issue, it was the Attorney General's submission that the Court could

not compel the 2<sup>nd</sup> respondent to amend the Nurses Act, as none of the respondents have such power. Further, in his view, the Court has no jurisdiction to make such an order as the power to amend and legislate lies with the legislature under Article 94 of the Constitution. He prayed that the application should be dismissed.

## **Determination**

35. The applicant seeks orders to stop the completion of the results of the elections for members of the 1<sup>st</sup> respondent which are due for completion tomorrow, the 17<sup>th</sup> of July 2015. Mr. Wangai, Counsel for the 1<sup>st</sup> respondent, submitted at the hearing hereof that there are already 8 ballot boxes awaiting opening and counting of the ballots set for tomorrow. He also submitted that the term of the members of the Council set to be replaced expired on 13<sup>th</sup> July 2015, and that a new Council is set to be constituted upon the opening of the ballot boxes tomorrow and the announcement of the winners.
36. It is the opening of the ballots, and the announcement of the winners, that the petitioner seeks to stop. The basis of the application for orders stopping the process can be simplified to two grounds: whether the process should be stopped because the legislation governing it discriminates against enrolled nurses who are members of the petitioner; and secondly, whether it should be stopped because some of the candidates were not validly nominated.
37. The respondents have questioned the *locus standi* of the petitioner to bring the present application. At this stage, and in view of the wide constitutional provisions with regard to standing set out at Article 22 of the Constitution, I will not enter into an inquiry into this issue. It can be addressed at the substantive hearing of the petition. Given the limited time for determination of the application, which was canvassed two days before the events it seeks to restrain, I will confine myself to the substance of the application.
38. In considering the application, I do so against the principles, which are now well established, on the basis of which the Court will grant conservatory orders. These were alluded to by Counsel for the AG in his oral and written submissions, and in the authorities relied on. Regrettably, the petitioner's Counsel did not address herself to the applicable principles.
39. These principles have been enunciated and considered in both the High Court and the highest court in the land, the Supreme Court- see for instance, **Centre for Rights Education and Awareness (CREAW) & 7 Others v Attorney General [2011] eKLR**; **Muslims for Human Rights (MUHURI) & 4 Others v Inspector General of Police & 2 Others [2014] eKLR**; **Martin Nyagah Wambora v Speaker of the County Assembly of Embu & 3 Others [2014] eKLR**
40. The Court, in exercising its discretion on whether to grant conservatory orders, must bear in mind several principles. First, as Musinga J (as he then was) observed in the case of **Centre for Rights Education and Awareness (CREAW) & 7 Others vs Attorney General**:
- “...It is important to point out that the arguments that were advanced by Counsel and that I will take into account in this ruling relate to the prayer for a Conservatory Order in terms of prayer 3 of the Petitioner’s Application and not the Petition. I will therefore not delve into a detailed analysis of facts and law. At this stage, a party seeking a Conservatory Order only requires to demonstrate that he has a prima facie case with a likelihood of success and that unless the Court grants the Conservatory Order, there is real danger that he will suffer prejudice as a result of the violation or threatened violation of the Constitution.”* (Emphasis added)
41. Secondly, as Ibrahim J (as he then was) observed in the case of **Muslims for Human Rights (MUHURI) & 2 Others vs Attorney General & 2 Others**:

***“I would agree with my Brother, that an applicant seeking Conservatory Orders in a Constitutional case must demonstrate that he has a “prima facie case with a likelihood of success.”***

42. Ibrahim J went on to observe as follows in the **Muhuri** case:

***“What is clear to me from the authorities is that strictly a “Conservatory Order is not an injunction as known in Civil matters or generally in other legal proceedings but is an order that tends to and is intended to preserve the subject-matter or set of circumstance that exist on the ground in such a way that the constitutional proceedings and cause of action is not rendered nugatory. Through a Conservatory Order the court is able to “give such directions as it may consider appropriate for the purpose of securing of ... the provisions of the Constitution (see – BANSRAJ above)”. A Conservatory Order would enable the court to maintain the status quo or existing situation or set of facts and circumstances so that it would be still possible that the rights and freedoms of the claimant would still be capable of protection and enforcement upon determination of the Petition and the trial was not a futile academic discourse or exercise”*** (Emphasis added)

43. In its decision in the case of **Gatirau Peter Munya vs Dickson Mwenda Githinji & 2 Others** (Supra), the Supreme Court enunciated the public interest principle as a consideration before granting conservatory orders in the following terms:

***“[86] ‘Conservancy Orders’ bear a more decided public-law connotation: for these are orders to facilitate ordered functioning within the public agencies, as well as to uphold the adjudicatory authority of the court, in the public interest. Conservatory orders, therefore, are not, unlike interlocutory injunctions, linked to such private party issues as ‘the prospects of irreparable harm’ occurring during the pendency of a case; or ‘high probability of success’ in the supplicant’s case for orders of stay. Conservatory orders, consequently, should be granted on the inherent merit of a case, bearing in mind the public interest, the constitutional values and the proportionate magnitudes, and priority levels attributable to the relevant causes.”*** (Emphasis added)

44. What emerges from the above pronouncements is that the Court is not, at the stage where it considers whether or not to grant conservatory orders, required to enter into a detailed analysis of facts and law. What is required is for the petitioner to show that it has a prima facie case with a likelihood of success, and that if the conservatory orders are not granted, it will suffer prejudice.

45. Further, the Court should grant conservatory orders in order to preserve the “*subject-matter or set of circumstance that exist on the ground in such a way that the constitutional proceedings and cause of action is not rendered nugatory*”.

46. The Court must also, as the respondents have submitted in reliance on the **Gatirau Peter Munya** case, be mindful of the public interest in determining whether or not to grant conservatory orders.

47. The question is whether the petitioner has met the first two principles, and whether the third principle can be applied in its favour in the circumstances of this case.

48. First, as observed above, the petitioner did not, either in the oral or written submissions, address its mind to the applicable principles. It did dwell a lot on the perceived discrimination against enrolled nurses, and emphasised the need for the elections to be stopped so that the question that it raises with respect to such discrimination can be addressed.

49. Its position, however, is weak on several fronts. First, as conceded by Ms. Ashubwe, the respondents have acted in accordance with the law in conducting the elections under attack. They have followed the process set out in the Nurses Act to the letter, as submitted by the respondents and undisputed by the petitioner. Under that Act, enrolled nurses do not qualify for election to the

Council, or to participate in electing members of the Council, the 1<sup>st</sup> respondent.

50. In addition, the 1<sup>st</sup> respondent, which is established under section 3 and 4 of the Nurses Act, is empowered to make regulations for elections. Section 26 of the Act mandates the 1<sup>st</sup> respondent, with the approval of the Minister, to make regulations for the better carrying out of the provisions of the Act. At section 26(j), the 1<sup>st</sup> respondent is empowered to make regulations for the procedure for elections of its members who require to be elected. . The 5<sup>th</sup> respondent, whose appointment is also questioned by the petitioner, is also duly appointed under section 11 of the Act.

51. The law, then, as it stands currently, is as set out in the Nurses Act, the relevant provisions of which I have summarised above. That being the case, and there being no argument that the respondents have not acted in accordance with the law as it is, there can be no basis for stopping the elections, as there is no illegality or irregularity demonstrated to justify so doing.

52. Secondly, the petitioner has not demonstrated any prejudice that it will suffer if the conservatory orders are not granted. Again, as conceded by Ms. Ashubwe, the Nurses Act has been in force since 1983. Its provisions have applied to the election of members of the Council, and it has excluded the enrolled nurses from election to the Council. It will doubtless be necessary, at the hearing of the petition, to consider the provisions of the Act and subject them to scrutiny under the prism of the Constitution. However, and this is where the third principle militates against the grant of the orders to the petitioner, it cannot be in the public interest to, as it were, ground the 1<sup>st</sup> respondent which is in the process of being constituted on the basis of the existing law, and thereby frustrate its operations entirely. As observed by the respondents, considerable public finances have been expended in the course of the elections, and some 30,000 nurses registered with the 1<sup>st</sup> respondent would be unregulated should the operations of the Council be hobbled by an order stopping the completion of its elections.

53. The petitioner has complained about the nomination or qualifications of one or two of the candidates. However, in my view, this is not a basis for stopping the elections. As observed by the respondents, there are provisions in the Nurses Act that empower the Minister to veto elections to the Council of unqualified candidates.

54. In the circumstances, I am not satisfied that there is any merit in the present application. It is therefore dismissed. Costs shall await the outcome of the petition.

**Dated, Delivered and Signed at Nairobi this 16<sup>th</sup> day of July 2015**

**MUMBI NGUGI**

**JUDGE**

**Ms. Ashubwe instructed by the firm of Eshiwani Ashubwe & Co. Advocates for the petitioner.**

**Mr. Wangai instructed by the firm of Prof. Kiama Mwangi & Co. Advocates for the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondent.**

**Mr. Mohamed instructed by the State Law Office for the 3<sup>rd</sup> respondent.**

**Mr. Mugambi for Mr. Nyandieka for Proposed interested party.**