



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NYERI

JUDICIAL REVIEW MISCELLANEOUS APPLICATION NO. 9 OF 2019

IN THE MATTER OF: AN APPLICATION FOR LEAVE TO COMMENCE JUDICIAL REVIEW PROCEEDINGS

AND

IN THE MATTER OF: AN APPLICATION FOR JUDICIAL REVIEW FOR ORDERS OF CERTIORARI, PROHIBITION AND MANDAMUS

AND

IN THE MATTER OF: SECTION D.20, D.28 & D.29 OF THE PUBLIC SERVICE COMMISSION OF KENYA; COUNTY PUBLIC SERVICE HUMAN RESOURCE MANUAL

AND

IN THE MATTER OF: ARTICLE 41 & 47 OF THE CONSTITUTION OF KENYA 2010, THE FAIR ADMINISTRATIVE ACTIONS ACT, 2015

AND

IN THE MATTER OF: SECTION 74 OF THE PUBLIC SERVICE COMMISSION ACT, 2017

AND

IN THE MATTER OF: SECTION 3(5) OF THE INTERPRETATION AND GENERAL PROVISIONS ACT AND SECTION 3(1) (A)(I) OF THE KENYA INFORMATION AND COMMUNICATIONS (POSTAL AND COURIER SERVICES) REGULATIONS, 2010

BETWEEN

1. KENYA MEDICAL PRACTITIONERS, PHARMACISTS & DENTISTS UNION

2. DR. AYUB GITAKA

3. DR. BONIFACE MIRINGU

4. DR. FRANK BUYA

5. DR. MARGARET MUKUHI

6. DR. SAMUEL WANJOHI

7. DR. SETH JOMO

8. DR. SOLOMON KIRUGO

9. DR. SOLOMON TYAA

10. DR. ABDISALAM MUTAJ
11. DR. ALEX GITAU
12. DR. ALICE WANGARI GITAU
13. DR. ANDREW MUTUA
14. DR. ANTHONY MUTURI
15. DR. ANTHONY NDEI
16. DR. APPOLO KINGA
17. DR. BERNARD ODHIAMBO
18. DR. BETTE ADHIAMBO
19. DR. BRIAN IMBOVA
20. DR. CAESAR MAKARA KANYANGO
21. DR. CATHERINE NYAMBURA
22. DR. CHARLES COLLINS
23. DR. CYNTHIA RUWA
24. DR. CYRUS NG'ANG'A NJOROGE
25. DR. DENNIS NG'ANG'A
26. DR. DIANA MARION
27. DR. EDWIN MAINA MWANGI
28. DR. EDWIN ONDICHO
29. DR. ELIZABETH MUTHONI
30. DR. ELIZABETH WAMBUI
31. DR. EMILY MUTHONI
32. DR. ERIC GACHATHI
33. DR. ESBON WAMBUGU
34. DR. ESTHER WAIRIMU
35. DR. EUNICE NYAMBURA
36. DR. JAMES WAGURA
37. DR. JOHN OMENDO
38. DR. JORAM MWANGI MUCHIRI
39. DR. JOSEPH ASERE
40. DR. JOSEPH SIMEL
41. DR. JOSEPH TABALYA MUSAMIA

- 42. DR. JULIA THEURI
- 43. DR. JUSTUS WAMBUGU
- 44. DR. KENNETH KINGORI
- 45. DR. KILONZO SAMM
- 46. DR. LYDIA KAVOCHI ILADIVA
- 47. DR. MARTIN WANJOHI
- 48. DR. MARY KHASIALA MUHALIA
- 49. DR. MARYANNE NJERI
- 50. DR. MERCY KINYA
- 51. DR. NANCY NKATHA
- 52. DR. OSANO NYANGA
- 53. DR. PATIENCE NANDWA
- 54. DR. PATRICK NJUGUNA
- 55. DR. PAUL GASCOIGNE
- 56. DR. SHEILA WANJIRA
- 57. DR. STEPHEN CHARAGU
- 58. DR. TOBI WAMAI
- 59. DR. TONY JUMA
- 60. DR. VINCENT GILBERT
- 61. DR. VINCENT WAMBUGU
- 62. DR. WINNIE WANJIRU.....EX – PARTE APPLICANTS

VERSUS

THE COUNTY GOVERNMENT OF LAIKIPIA.....1ST RESPONDENT
 LAIKIPIA COUNTY PUBLIC SERVICE BOARD.....2ND RESPONDENT

AND

PUBLIC SERVICE COMMISSION.....INTERESTED PARTY

RULING

1. The 1st *Ex parte* Applicant, in the main, seeks in its application dated 31st August 2020 that the Interested Party’s ruling of 12th August 2020 be deemed as filed and adopted as an order of the Honourable Court. Upon adoption of the Interested Party’s ruling of 12th August 2020 as an order of this Court, summons be issued to Karanja Njora, the County Secretary of the County Government of Laikipia, Dr. Donald Mogoi, the Acting County Chief Officer Medical Services and Public Health, County Government of Laikipia and Paul Njenga Waweru, the Acting County Chief Officer, Finance, County Government of Laikipia, to show cause why he should not be committed to civil jail for blatant disobedience of the Interested Party’s ruling of 12th August 2020 as adopted as an order of this Honourable Court. Additionally, it sought that the Respondents and the said Karanja Njora, Dr. Donald Mogoi and Paul Njenga Waweru be and are hereby denied further audience by this Honourable Court save for showing cause why they should jointly and/or severally not be committed to civil jail for such term as the Court may deem just for the blatant disobedience of the Interested Party’s ruling of 12th August 2020 as adopted as an order of this Court. The application was premised on grounds upon its face and is supported by the affidavit of Dr. Davji Bhimji Atella.

2. The Respondents were opposed and filed a replying affidavit sworn by Karanja Njora, the County Secretary Laikipia County Government. In brief he stated that the application is a non-starter as the orders sought cannot be granted. He deponed that the consent was reached on mutual agreement by all parties that this suit was wrongfully instituted in the first place and there was need to regularize. He stated that this suit was defective, void *ab initio* because for the *Ex parte* Applicants, the Interested Party was the first port of call. He deponed that it is not possible to seek additional orders within this suit as it is flawed and fatally defective *ab initio*. The Respondents assert that the enforcement orders can only be through an application in a fresh suit. The Respondents additionally argued that they were not accorded a fair hearing by the Interested Party thus impairing the decision it arrived at.

3. Pursuant to the Consent Order made on 15th October 2019, the 1st *Ex Parte* Applicant the Kenya Medial, Pharmacists & Dentists Practitioners Union on or about 25th October 2019, for and on behalf of the 61 *Ex Parte* Applicants herein, submitted to the Interested Party for Appeal the entire decision by the Respondents of the 21st June 2019 to summarily dismiss 34 of the 1st *Ex Parte* Applicant's members. The Public Service Commission (PSC) on 12th August 2020 issued its final ruling to the 1st *Ex Parte* Applicant's Appeal. It directed as follows:-

1) The decision of the Respondents to summarily dismiss the doctors listed in the appeal dated 25th October 2019, from the Laikipia County Service, is hereby set aside.

2) The doctors listed in the appeal dated 25th October 2019 are hereby reinstated to the positions that they held in the Laikipia County Public Service prior to the decision of the Respondents to summarily dismiss them on 21st June 2019.

3) The doctors listed in the appeal dated 25th October 2019 are not entitled to any remuneration and benefits between the period 3rd June and 20th June 2019 when they participated in a strike that was declared by court to be unlawful and unprotected.

4) The doctors listed in the appeal dated 25th October 2019 are entitled to all their remuneration and benefits, save as otherwise stated in this decision, in the same manner as other members of the appellant who were not terminated.

5) The respondents do pay the doctors listed in the appeal dated 25th October 2019 all and any withheld remuneration and benefits, save as ordered in this decision, up to and including the date that the Respondents shall reinstate them back to the County Public Service.

6) Upon reinstatement, the Respondents do continue to pay the doctors listed in the appeal dated 25th October 2019 in accordance with their terms and conditions of service.

4. The attack against the *ex parte* Applicant's prayer for the adoption of the decision of the Public Service Commission decision of 12th August 2020 is this – the proceedings here are impugned on the basis that the procedure invoked was unlawful since the *ex parte* Applicant had moved the Court before first exhausting the remedy under the law which was what it did in the appeal to PSC. It is indeed true that the proceedings in this judicial review were attacked as being premature and in a swift about turn, the *Ex parte* Applicants sought to have the appeal against the decision of the Respondents at the Public Service Commission be heard and determined within 30 days effective 16th October 2019. This is the decision that ultimately was issued on 12th August 2020.

5. In my considered view, the Court not having determined that the proceedings were impaired, can the Court now adopt for action or as a court order the decision that was obtained after the *ex parte* Applicant sought the relief in the correct forum? I think so. The proceedings though challenged by the preliminary objection filed, a determination thereon was not made as the preliminary objection was compromised by way of a consent. The consent of the parties made no mention of the illegality of the proceedings before me or the alleged defect in the suit. It is clear the best course is to have the 1st *Ex parte* Applicant to make an application seeking enforcement by way of *mandamus*. In the premises as the orders sought in the first substantive prayer of the motion are in the nature of *mandamus*, I grant the motion by the 1st *Ex parte* Applicant in part to the extent that the Interested Party's ruling of 12th August 2020 be and is hereby deemed as duly filed and adopted as an order of the Honourable Court. I accordingly direct and compel the Respondents by way of *mandamus* to commence implementation of the Ruling of the Public Service Commission dated 12th August 2020 bearing in mind the provisions of Section 89 of the Public Service Commission Act. There shall be no order as to costs.

It is so ordered.

Dated and delivered at Nyeri this 19th day of October 2020

Nzioki wa Makau

JUDGE