



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**AT NAIROBI**

**CAUSE NUMBER JR 19 OF 2017**

**DR. PIUS WANJALA.....CLAIMANT**

**VERSUS**

**PUBLIC SERVICE COMMISSION .....1<sup>ST</sup> RESPONDENT**

**MINISTRY OF HEALTH.....2<sup>ND</sup> RESPONDENT**

**CABINET SECRETARY MIN. OF HEALTH.....3<sup>RD</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....4<sup>TH</sup> RESPONDENT**

**DR FRED SIYOI.....1<sup>ST</sup> INTERESTED PARTY**

**THE PHARMACY & POISONS BOARD.....2<sup>ND</sup> INTERESTED PARTY**

**RULING**

1. On 9<sup>th</sup> October, 2018 the court directed that since the application dated 15<sup>th</sup> March, 2018 raised a fundamental issue of law that is whether the amendment to section 5 of the Pharmacy and Poisons Act deleting the position of Chief Pharmacist left the Judicial Review application with no ground to stand on, the issue would be decided in limine.

2. Mr Naikuni for the 1<sup>st</sup> Interested party submitted that the position of the law regarding the matter had since changed thereby rendering the question that the court had been called upon to determine moot in the sense that the position of Chief Pharmacist under section 5(1) of the Pharmacy and Poisons Act had been deleted and replaced with the position of Chief Executive Officer/CEO. The CEO was not competitively recruited by the Pharmacy and Poisons Board with the relevant qualification set by the Board. According to counsel therefore, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondent's therefore no longer had any role in the appointment process of the CEO.

3. Mr Naikuni further submitted that the proceedings before the court sought order of certiorari to quash the decision of 2<sup>nd</sup> and 3<sup>rd</sup> respondent of appointing Dr Fred Siyoi as the acting Chief Pharmacist and thus the Acting Registrar of the Board. On the other hand the orders of prohibition were aimed at prohibiting the public service commission from appointing Dr Siyoi as the Chief Pharmacist. The final orders of Mandamus sought to compel the 1<sup>st</sup> respondent as employer to remove Dr Siyoi from acting or serving as the substantive Chief Pharmacist and Registrar of the Board.

4. Mr Naikuni therefore submitted that the live and only issue in the proceedings was the question as to whether the 1<sup>st</sup> interested party was qualified for appointment as either acting or substantive chief pharmacist which process was exclusively undertaken by the Public Service Commission. Determination of that issue would automatically had an implication on the position of the Registrar of the Board in view of the provisions of section 5 of the Act (now repealed) which mandatorily provided that Chief Pharmacist shall be the Registrar. According to counsel the position of the law has since changed in the sense that the Chief Pharmacist is no longer the automatic Registrar of the Board. The Registrar of the Board is now the CEO whose process of recruitment is separate and distinct from the recruitment of the Chief Pharmacist.

5. Mr Odhiambo for the 2<sup>nd</sup> Interested party similarly submitted hence there would be no need to repeat same submissions.

6. Mr Simiyu for the applicant submitted that the fact that Dr Siyoi was still acting as the Registrar of the Pharmacy and Poisons Board and as Chief Pharmacist, the controversy has become compounded and hence the proceedings on account of the stature law (Miscellaneous

Amendment) Act which amended Section 5(1) of the Pharmacy and Poisons Act did not moot the proceedings.

7. Judicial Review application dated 17<sup>th</sup> August, 2017 sought among other orders of certiorari, prohibition and Mandamus against the respondent. The orders concerned the decision of the 2<sup>nd</sup> and 3<sup>rd</sup> respondent of March, 2017 appointing Dr Fred Moin Siyoi as the Acting Chief Pharmacist and thus the Registrar of Pharmacy and Poisons Board.

8. The applicant’s complaint was that Dr Siyoi did not possess the mandatory qualifications for appointment. That is to say for one to be appointed as Chief Pharmacist, one must have served in the Job Group R as Senior Deputy Chief Pharmacist for at least 3 years and further one must possess a masters degree in one of the Pharmaceutical Sciences as listed in the scheme of service. According to the applicant Dr Siyoi did not possess any of these qualifications.

9. Section 5(1) of the Pharmacy and Poisons Act prior to the Miscellaneous amendment Act provided that there shall be a registrar of the Board who shall be the Chief Pharmacist. The stature Law (Miscellaneous Amendment) (No 3) Bill, 2017 deleted the words “Chief Pharmacist” and substituted therefore the words with “Chief Executive Officer of the Board competitively recruited and appointed by the Board upon such terms and conditions of service as shall be determined by the Board upon the advise of the SRC”. This implied that appointment as Chief Pharmacist did not automatically make the appointee the Registrar of the Board.

10. The dispute before me is not restricted only to the Registrar of the Board. It concerns basically, the competence of Dr Moin Siyoi to be appointed as Chief Pharmacist. For one to have been the Registrar under repealed law, he or she had to be appointed as the Chief Pharmacist first. To this extent the court does not seem to be in agreement that the cessation of automatic appointment as Registrar upon becoming Chief Pharmacist rendered this application moot. The issue of qualification of Dr Siyoi to be appointed as the Chief Pharmacist still remains contested and is triable by the court.

11. The court therefore disallows the preliminary objection herein.

12. It is so ordered.

Dated at Nairobi this 24<sup>th</sup> day of May, 2019

**Abuodha J. N.**

**Judge**

**Delivered this 24<sup>th</sup> day of May, 2019**

**Abuodha J. N.**

**Judge**

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.