



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

JUDICIAL REVIEW NO. 1 OF 2019

(Before Hon. Lady Justice Hellen S. Wasilwa on 2nd May, 2019)

HEALTH SYSTEMS MANAGEMENT

ASSOCIATION OF KENYA.....APPLICANT

VERSUS

KENYATTA NATIONAL HOSPITAL BOARD...1ST RESPONDENT

DELOITTE CONSULTING LIMITED.....INTERESTED PARTY

RULING

1. The application before Court is the Preliminary Objection filed by the 1st Respondent herein on 28/1/2019 and premised on the grounds that:-

- 1. The suit is neither premature, nor incompetent, nor defective in any discernible way, and therefore does lie, in that it relates to constitutional and statutory violations and unfair administrative action on the part of the 1st Respondent.***
- 2. The recruitment noticed published by the 1st Respondent is illegal, irrational, irregular, procedurally improper and unreasonable, the basis whereof is set out in the Applicant's Application.***
- 3. The provisions of the Health Act, No 21 of 2017 ostensibly offended are mere notes in a Schedule and accordingly do not have any force of law.***

2. The Preliminary Objection in essence raises issues related to the Health Act No. 21 of 2017, Third Schedule which are in my view factual issues. These issues will not be resolved by mere examination of the provisions of the law without calling evidence.

3. The principle in **Mukisa biscuit Manufacturing Company Limited vs West End Distributors Limited (1969) EA 696** is that:-

“A Preliminary Objection consist of a pure point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose off the suit Exparte are objection to the jurisdiction of the Court or a plea of invitation or submissions that the Parties are bound by the contract giving rise to the suit to refer to arbitration...”

4. In the current application, issue of prematurity of the case are not pure points of law. These would need the Parties to submit facts in evidence and this goes behold the scope of a Preliminary Objection.

5. I believe the application is therefore not merited as a Preliminary Objection and I therefore proceed to dismiss it accordingly and order the main case to proceed.

Dated and delivered in open Court this 2nd day of May, 2019.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Otieno for Applicant – Present

Respondent – Absent