



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NYERI

CAUSE NO. 11 OF 2019

KENYA NATIONAL UNION OF NURSES.....CLAIMANT/RESPONDENT

VERSUS

KIAMBU COUNTY PUBLIC SERVICE.....1ST RESPONDENT

NYERI COUNTY PUBLIC SERVICE.....2ND RESPONDENT

LAIKIPIA COUNTY PUBLIC SERVICE BOARD.....3RD RESPONDENT

NYANDARUA COUNTY PUBLIC SERVICE BOARD.....4TH RESPONDENT

KIRINYAGA COUNTY PUBLIC SERVICE BOARD.....5TH RESPONDENT/APPLICANT

WYCLIFFE AMBETSA OPARANYA.....6TH RESPONDENT

RULING

1. The application dated 11th June 2019 is due. Mr. Baraza for the 5th Respondent/Applicant however points out that in view of Rule 9 of the Oaths and Statutory Declarations Act, the replying affidavit of Jane Wangare sworn in opposition of the motion by the 5th Respondent/Applicant is a non-starter. He submitted that the application dated 11th June 2019 is supported by the affidavit of Geoffrey Githinji Kamau sworn on 11th June 2019 together with annexures thereto. He submitted that Claimant/Respondent has filed a Replying Affidavit dated 25th June 2019 and that the Replying Affidavit does not comply with Rule 9 of the Oaths & Statutory Declaration Rules. He asserts that the annexures are not sealed with the seal of a Commissioner for Oaths and the annexures are therefore not proper exhibits. He argues that the annexures should therefore be expunged and in effect if those annexures are expunged, the affidavit is incomplete and the same without the annexures is valueless and should also be rejected. He submitted that failure to seal the annexures with the seal of a Commissioner for Oaths goes to the rules of evidence and is not a mere technicality or something that can be cured by the provisions of Article 159(2)(d). He submitted that the failure to seal annexures and serialize them is fatal and should be expunged. Mr. Lawi for the 6th Respondent was not opposed to the motion and craved leave to file a preliminary objection on the filing of the suit against the 6th Respondent in his personal capacity.

2. Miss Wangare for the Claimant/Respondent submitted about the serialization of the affidavit that she may not have been properly advised but all the annexures that have been annexed emanated from the proceedings. She submitted that the matter has not proceeded without proper service and the affidavits are all on record.

3. The provisions of the Oaths and Statutory Declarations Rules are contained in subsidiary legislation to the Oaths and Statutory Declarations Act, cap. 15 Laws of Kenya. Affidavit evidence is an accepted form of presenting evidence. Under Rule 9 of the Oaths and Statutory Declarations Rules, the law provides as follows:

9. All exhibits to affidavits shall be securely sealed thereto under the seal of the commissioner, and shall be marked with serial letters of identification.

4. The law peremptorily uses 'shall' to denote that there is no discretion in the choice of affixing the seal and serializing the exhibits forming part of the affidavit. Without the said seal by the Commissioner there is no proper affidavit before the court. I expunge the offending affidavit. Having expunged the affidavit by the Claimant/Respondent, there is in essence no defence to the motion. The application dated 11th June 2019 by the 5th Respondent/Applicant is therefore granted as prayed with costs to the 5th Respondent.

It is so ordered.

Dated and delivered at Nyeri this 3rd day of July 2019

Nzioki wa Makau

JUDGE

I certify that this is a

true copy of the Original

Deputy Registrar