

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NYERI

CAUSE NO. 18 OF 2019

KENYA NATIONAL UNION OF NURSES.....CLAIMANT

VERSUS

MURANG'A COUNTY PUBLIC SERVICE BOARD.....1ST RESPONDENT

MURANG'A COUNTY GOVERNMENT.....2ND RESPONDENT

WYCLIFFE AMBETSA OPARANYA.....3RD RESPONDENT

RULING

1. The objection is to the joinder of one Wycliffe Ambetsa Oparanya the Chair of the Council of governors who is sued as the 3rd Respondent. It is asserted by Mr. Lotai that his joinder in personal capacity is untenable granted provisions of the Intergovernmental Relations Act 2012. He cites Section 19 and 20 in particular and asserts the elective position held by the 3rd Respondent is executed in terms of the Act of parliament and the 3rd Respondent cannot be personally liable as the Council of governors comprising the 47 County governors is the body that makes decisions as Council of Governors or through its committees set up pursuant to the Act. As such he argues the position is temporary and it would be unconscionable to have a personal suit subsist against the Chair since the Council of Governors is a body corporate capable of suing and being sued. He makes reference to a suit determined by Rika J. in Cause 36 of 2019 in Mombasa.

2. Mr. Odongo for the Respondent (Claimant) to preliminary objection submits that the objection is misplaced as the jurisdiction and discretion of the court to hear and determine facts is not capable to be dislodged through the preliminary objection as there is authority for the court to hear and determine the suit. He submits that granted the findings in the Supreme Court in the case No. 36 of 2014 between **IEBC v Jane Cheberenger & Another [2015] eKLR** the court ought not to strike out the suit preemptorily. He seeks to rely on the case of **Republic v Eldoret Water & Sanitation Company Ltd Ex parte Booker Onyango & 2 Others [2007] eKLR** where the court declined grant of the preliminary objection where facts have to be ascertained. He submitted lastly that the 3rd Respondent had not demonstrated sufficient basis for the exclusion from proceedings and the consensus alleged in the execution of the order of 15th February 2019. He urged court not to dismiss the suit in entirety. He prayed the preliminary objection be dismissed with costs.

3. The 3rd Respondent's Counsel submitted briefly in response that the 3rd Respondent holds an elective position which comes to an end in December 2019 and it would be untenable to have proceedings subsist even after he ceases holding that position against him for decisions made when he was Chair. The Advocate for 3rd Respondent thus urged the grant of the preliminary objection.

4. The Preliminary Objection in as far it relates to misjoinder seeks the 3rd Respondent's exclusion from the proceedings herein. Under Section 19(2) of the Intergovernmental Relations Act 2012 the Council of Governors established in Section 19 has functions spelt out in Section 20. The Council of Governors has a Chair who presently happens to be Hon. Wycliffe Ambetsa Oparanya the Governor for Kakamega County. He is presently the Chair of the Council of Governors and as 3rd Respondent seeks to have been sued in his personal capacity. If the action against him is in respect of his personal acts then he ought not have been sued in Nyeri County as he is a Governor in Kakamega. It seems the suit relates to circular from the Council of Governors and as such the suit against him is improper as he did not act as Wycliffe Oparanya but as Chair of the Council of Governors. If the suit had named the chair of Council of Governors without specifying his name it could subsist as it is against the office and not the individual. In my considered view the joinder of 3rd Respondent is misplaced and his name is struck out of these proceedings with costs to the 3rd Respondent. The suit survives but the costs of the 3rd Respondent to be borne by the Claimants for the misjoinder.

It is so ordered.

Dated and delivered at Nyeri this 7th day of October 2019

Nzioki wa Makau

JUDGE

I certify that this is a

true copy of the Original

Deputy Registrar