



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO 2063 OF 2015**

**BENARD OKEAH.....1ST CLAIMANT**

**KENNEDY OTIENO.....2ND CLAIMANT**

**BENARD RONOH KIPROTICH.....3RD CLAIMANT**

**PHOEBE WAITHIRA OMONDI.....4TH CLAIMANT**

**BENSON MAINGI.....5TH CLAIMANT**

**TERESIAH NJOKI KIRATU.....6TH CLAIMANT**

**VS**

**THE NATIONAL NURSES ASSOCIATION OF KENYA.....1ST RESPONDENT**

**JAELE OCHIENG AND BONIFACE WACHIRA (sued jointly as Trustees of  
the) NATIONAL NURSES ASSOCIATION OF KENYA.....2ND RESPONDENT**

**RULING**

1. This ruling flows from the Claimants' application dated 19th November 2015 seeking the following prayers:

- a. That the Claimants be unconditionally reinstated to their respective work stations with full salaries and benefits as at April 2015 pending hearing and determination of the suit;
- b. That the Court suspends the temporary leave issued to the Claimants on 4th September 2015;
- c. That the Claimants be unconditionally granted access to their respective work stations and the Respondents be restrained from harassing, victimising and intimidating them;
- d. That there be a stay of appointments and/or recruitments by the Respondents to fill the Claimants' respective positions until further orders of the Court;
- e. That the costs of this application be paid by the Respondents.

2. The application, which is supported by the affidavit of the first Claimant, Bernard Okeah is based on

the following grounds:

- a. That the Claimants are at a risk of losing their jobs and being illegally replaced following the action by the 1st Respondent's Officials of sending the 1st and 4th Claimants on an indefinite compulsory leave without any explanation or justification;
- b. That the Claimants are at a risk of losing their jobs following the action by the 1st Respondent's Officials of sending the 1st, 2nd, 4th and 5th Claimants on three weeks' temporary leave with no formal explanation. The three weeks' temporary leave has since expired and no communication has been issued by the 1st Respondent recalling the Claimants to their respective work stations and further, no disciplinary action has been sanctioned by the 1st Respondent;
- c. That the Claimants who are employees of the 1st Respondent on three year contracts have not been paid their wages since May 2015;
- d. That the conduct of the 1st Respondent is tainted with illegalities and procedural anomalies aimed at constructively dismissing the Claimants;
- e. That the Claimants are apprehensive that unless the orders sought are granted, they will suffer irreparable loss as the 1st Respondent may unlawfully dismiss them and proceed to replace them in disregard of the law.

3. In a replying affidavit sworn by Jael Ochieng on 2nd December 2015, she depones that the orders sought by the Claimants, if granted, would be in violation of the law. Ochieng further depones that the Claimants, having failed to honour summons to meet the 1st Respondent's officials, had been replaced and there were no vacant positions to which they could be reinstated. She adds that the Claimants had not only shown disrespect to the said officials but had refused to recognise them as duly elected.

4. In her affidavit, Ochieng accuses the Claimants of theft of computers and other items belonging to the 1st Respondent. A report had been made at the Kenyatta National Hospital Police Post and disciplinary proceedings commenced against the Claimants. The Claimants had however declined to subject themselves to these proceedings.

5. The issue for determination in this application is whether the Claimants have made out a *prima facie* case for granting of the orders sought at the interlocutory stage. The definition of what constitutes a *prima facie* case is well settled in law. In ***Mrao Ltd v American Bank Ltd & 2 Others [2003] eKLR***, the Court of Appeal held that a *prima facie* case is more than an arguable case.

6. In my understanding, a *prima facie* case is one that is so clear on the face of it, that the Court can proceed and make a determination based on affidavits and supporting documents. The minute the Court begins to entertain questions in its mind either on the veracity or accuracy of the averments by the parties or documents placed before it, it is no longer a *prima facie* case.

7. The parties in this dispute have made several opposing statements that, in my view, require further interrogation and testing in a *viva voce* hearing. For this reason, it is not possible to determine the issues placed before the Court at this interlocutory stage. That being the case, the Claimants' application fails and is dismissed with costs being in the cause.

8. I direct that the main claim set down for hearing on priority basis.

9. Orders accordingly.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 22ND DAY OF APRIL 2016.**

**LINNET NDOLO**

**JUDGE**

**Appearance:**

Mr. Musungu for the Claimants

Mr. Jaoko for the Respondents