



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 642 OF 2014

KENYA NATIONAL UNION OF NURSES.....CLAIMANT

v

PUBLIC SERVICE COMMISSION.....1st RESPONDENT

THE HONOURABLE ATTORNEY GENERAL.....2nd RESPONDENT

UASIN GISHU PUBLIC SERVICE BOARD.....3rd RESPONDENT

RULING NO. 2

1. Before Court are 2 applications. One by the 3rd Respondent filed in Court on 17 December 2015, and another by the Claimant Union filed on 25 January 2016.

3rd Respondent's motion

2. In a judgment delivered on 30 October 2015, the Court ordered the 3rd Respondent to absorb and confirm on permanent terms nurses employed under the Economic Stimulus Program (ESP health staff) with effect from 12 February 2015.
3. On 17 December 2015, the 3rd Respondent moved Court seeking

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2.

3. The execution of the Honourable Court's judgment given on 30th October, 2015 and the Decree issued on 2nd November, 2015 and all incidental orders is stayed pending hearing and determination of the intended Appeal.

4.

4. The Claimant Union filed its Grounds of Opposition to the motion, and arguments were taken on 7 March 2016.
5. The 3rd Respondent urged that the application was brought without inordinate delay as it was filed only 2 months after the judgment; that implementation of the judgment would affect its projects which had already been budgeted for and that there was imminent risk of the judgment being enforced through committal proceedings and that it was ready to deposit security.
6. The Claimant Union in opposing the motion submitted that the application was brought after

- inordinate delay; that its members were working without being paid wages and hence were suffering and that the legal issues sought to be appealed had conclusively been determined by the Court of Appeal in *County Public Service Board of Muranga & 2 Ors v Grace N. Makori & Ors* (2015) eKLR.
7. Order 42 rule (6)(2) of the Civil Procedure Rules has outlined the conditions upon which stay of execution pending appeal may be granted. Briefly, these are that the applicant should satisfy the Court that substantial loss may be occasioned; that the application should be made without unreasonable delay and lastly, provision of such sufficient security by the applicant.
 8. Courts' have on various occasions discussed and distilled the principles arising out of Order 42 rule 6 of the Civil Procedure Rules. Such cases are *Mukuma v Abuoga* (1988) KLR 645, *Jotham Simiyu Wasike & another v Jackson Ongeru & 4 others* (2013) eKLR, *Tabro Transporters Ltd v Absalom Dova Lumba* (2012) eKLR and *Anthony Kiberenge Kamau v Kibuchi Wamunyi & 3 others* (2010) eKLR.
 9. In the Court's view, the 3rd Respondent has not satisfied the test for grant of stay pending appeal despite offering to furnish security.
 10. In addition, and of more interest in the present application is that the Court of Appeal has conclusively determined the questions surrounding the ESP health staff in the *County Public Service Board of Muranga* case and in my view, granting the order sought at this hierarchy of the judicial chain would be an academic exercise.
 11. The 3rd Respondent's motion therefore is for dismissal.

Claimant Union's motion

12. The Claimant Union on its part filed an application seeking

1.

2. THAT the 3rd Respondent be ordered to comply with the Court Orders issued on 30th October, 2015, particularly order No. 2, which directed that 'the ESP health staff be deemed as having been absorbed from 12th February 2015, this being the date the resolution to absorb the staff was reached.'

3. THAT this Honourable Court do issue an order compelling the 3rd Respondent (Uasin Gishu Public Services Board) to pay the ESP Health Staff their salaries from February 2015 to date.

4. THAT an order of this Honourable court directing that the chairman of the 3rd Respondent (Uasin Gishu Public Services board) namely Joseph Tanui be cited for contempt of valid court orders and be committed to civil jail for a period of 6 months or such period as deemed just and sufficient by this Honourable court and such further orders be made as the court may deem necessary for contempt of court by disobeying this Honourable Court orders, issued on 30-10-2015.

5. THAT this Honourable court do issue an order summoning the chairperson of the 3rd Respondent Joseph Tanui to appear before this Honourable court to show cause why he should not be cited for contempt for disobedience of Court orders.

6. THAT this Honourable Court do impose a mandatory penalty to be paid by the chairperson of the 3rd Respondent (Uasin Gishu Public Service Board) namely Joseph Tanui for non-compliance with a Decree issued 2nd November 2015.

7. The officer Commanding Central Police station and/or the relevant police station with the requisite territorial jurisdiction do execute the orders herein.

8. Costs of this application be provided for.

13. Quite a verbose application indeed, if there was one.
14. In my view, it is not necessary for the Court to examine the merit of this application.
15. I say so, because it is apparent that the Claimant Union was on a fishing expedition in seeking a myriad of unrelated orders in one fell swoop. It was on a fishing expedition casting its net wide and far and hoping that the net would catch something, anything.
16. Practitioners ought to plead with a little bit more care and ought to be concise and clear in what actionable wrong is sought to be remedied.
17. The application is so compounded as to make it near impossible for the Respondent to adequately respond. It is not even clear why the assistance of the Police was called for in a dispute of this nature.
18. Further, penalties are sought against persons who were not parties to the litigation with no disclosure as to whether they were served. A Court of law should not curtail the liberty of a citizen without a hearing.
19. Granting the Claimant Union's motion would not only embarrass the Court, but prejudice the persons named therein.

Conclusion and Orders

20. The upshot of the foregoing is that the Court dismisses both motions with no order as to costs

Delivered, dated and signed in Nakuru on this 8th day of April 2016.

Radido Stephen

Judge

Appearances

For Claimant Union Ms. Wachira instructed by Wachira Wanjiru & Co. Advocates

For 3rd Respondent Mr. Kenei instructed by Gumbo & Associates Advocates

Court Assistant Nixon