



**REPUBLIC OF KENYA**

**EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI**

**CAUSE NO. 756 OF 2013**

**KENYA NATIONAL UNION OF NURSES.....CLAIMANT**

VERSUS

**KENYATTA NATIONAL HOSPITAL BOARD.....RESPONDENT**

**RULING**

1. The Claimant/Applicant filed a Notice of Motion dated 03<sup>rd</sup> March 2015 on the 13<sup>th</sup> March 2015 seeking an order to stay the ruling and orders of **Marete, J** dated 20<sup>th</sup> February 2015 and delivered on 25<sup>th</sup> February, 2015.

2. The **Hon. Marete, J** had made the following orders;

- i. That the intended interested party, KUDHEIHIA be and is hereby enjoined as a party to this suit.
- ii. That this application and the entire suit be and is hereby dismissed.
- iii. That each party bears its own costs of this case.

3. The Application is supported by the grounds set out on the face of the application and by an Affidavit sworn on 3<sup>rd</sup> March 2015 by Seth Panyako, the General Secretary of the Claimant/Applicant. The Application is opposed vide grounds of opposition dated 24<sup>th</sup> March 2015 and filed on 25<sup>th</sup> March 2015. The issue for determination is whether there is anything to stay since **Hon. Marete J** simply dismissed the entire suit.

4. The court relies on the decision of the Court of Appeal in **Singh Dhiwa –Vs- Keshavjisinav Shah [2008] eKLR** where the Court found;

*“The 2<sup>nd</sup> prayer in the application is for stay (of execution) of the orders of the superior court made on 18th December 2006. The order of 18<sup>th</sup> December 2006 merely dismissed the application for setting aside the judgement with costs. By the order, the superior court did not order any of the parties to do anything or refrain from doing anything or to pay any sum. It was thus a negative order which is incapable of execution save in respect of costs only (see Western College of Arts & applied Sciences – Vs- Orange & Others [1970] KLR 63 at page 66 paragrah L)”. also see Fisel Amin Jan Mohammed T/A Dunya Forwarders -Vs- Shamvi Trading Co Ltd [2014] eKLR.*

5. This case is on all fours with the present matter and the court finds that **Marete J** made a negative order dismissing the application and the entire suit. The Judge did not direct any of the parties to do anything except for each party to bear their own costs.

6. Accordingly, the application for stay of execution pending appeal is dismissed with costs.

**Dated and delivered in Nairobi this 1<sup>st</sup> day of April, 2016.**

**MATHEWS N. NDUMA**

**PRINCIPAL JUDGE**