



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA**

**AT NAIROBI**

**PETITION 53 OF 2014**

**KENYA NATIONAL UNION OF NURSES ..... APPLICANT**

**VERSUS**

**KENYATTA NATIONAL HOSPITAL BOARD ..... 1<sup>ST</sup>  
RESPONDENT**

**THE CABINET SECRETARY MINISTRY OF HEALTH.....2<sup>ND</sup>  
RESPONDENT**

**THE ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**MR. JUSTUS KIMATHI MBUI ..... 4<sup>TH</sup> RESPONDENT**

**M/S ASHUBWE FOR PETITIONER**

**MR. MUTUBWA FOR 1<sup>ST</sup> AND 4<sup>TH</sup> RESPONDENTS/OBJECTORS**

**MRS. CHESINA FOR 2<sup>ND</sup> AND 3<sup>RD</sup> RESPONDENTS**

**RULING**

1. The 1<sup>st</sup> and 4<sup>th</sup> Respondents raised Preliminary Objections to the Petition set out from paragraph 1 to 9 of the Notice.
2. The court has considered the submissions by the Advocates to the parties and has come to the conclusion that except Objection No. 2 all the other points raised are incapable of disposal without considering facts of the case.
3. These points are therefore not pure points of law capable of determination at this stage of the trial.
4. As regards point No. 2 which reads;  
  
“This court lacks the requisite jurisdiction under Article 162(2) of the constitution as read with Section 12 of the Industrial Court Act.”
5. A perusal of the Notice of Motion dated 25<sup>th</sup> August, 2014 and the Petition of the same date shows

that the issues in dispute arise from an employer employee relationship between the grievant and the 1<sup>st</sup> Respondent.

6. To this extent, this court has jurisdiction to hear ad determine the matter.

7. With regard to the non-joinder of KUDHEIHA, this cannot be fatal to the suit since, joinder may be ordered upon application by either party or at the behest of the court if indeed KUDHEIHA is a necessary party.

8. Whether or not the grievant is a member of the petitioner is a question of fact to be determined in the course of the hearing of the matter.

9. This matter deals with the dismissal of the grievant whereas Industrial Court Cause No. 756 of 2013 is a recognition dispute between the Petitioner herein and the 1<sup>st</sup> Respondent. The allegation that this is the same suit as the one in Cause No. 756 of 2013 has no basis.

10. Objections 4 to 9 are incapable of resolution without hearing the merits of the case.

11. For these reasons the preliminary objections are not upheld with costs in the cause.

**Dated and Delivered at Nairobi this 28<sup>th</sup> day of January, 2015.**

**MATHEWS N. NDUMA**

**PRINCIPAL JUDGE**