



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE NO. 1570 OF 2013

KENYA NATIONAL UNION OF NURSES.....CLAIMANT

VERSUS

THE ATTORNEY GENERAL

Acting for

- 1. The Secretary and all Commissioners to
The Public Service Commission**
- 2. The Permanent Secretary**

The Ministry of Health.....RESPONDENT

UNION OF KENYA CIVIL SERVANTS.....INTERESTED PARTY

Mr. Enonda for Claimant/Applicant

M/s Chesina for Respondent

M/s Ligunya for Interested Party

RULING

1. Kenya National Union of Nurses, aggrieved by the failure by the Secretary of the Public Service Commission and the Principal Secretary, Ministry of Health to effect an interim order of the court to stop deducting union dues from its members and remitting them to the Union of Kenya Civil Servants (UKCS), moved the court by an urgent Notice of Motion dated 22nd January, 2014 on the same date seeking orders inter alia to;

- (i) cite the Secretary of the Public Service Commission and the Principal Secretary, Ministry of Health for contempt of the court orders issued on 6th December, 2013.

2. **Facts of the Case**

From the papers filed on record and the submissions by the parties, the court has arrived at the following findings of fact;

1. The affected members of the Applicant Union work under the Ministry of Health.
2. That the said health workers have been deployed to serve under the 47 counties and are paid directly by the county governments.
3. That the Ministry of Health had prior to the transfer been served with a court order to effect deductions of union dues, the subject of the dispute and had in fact deducted and remitted to the Interested Party Union dues for one month.
4. That the Ministry of Health stopped effecting the deductions and by a letter dated 28th January, 2014 the Principal Secretary of the Ministry of Health wrote to the Attorney General's Office confirming that the Ministry had complied with the order issued by the court.
5. It is the court's considered view that, even if there was an initial failure to comply with the court order, the Applicant has not established that such failure was willful and intended to bring the court into contempt.
6. Indeed the Principal Secretary, Ministry of Health demonstrated good faith in stopping the said deductions as soon as the court order came into his attention.
7. The deductions of the union dues from the members of the Applicant is now a matter that squarely lies between the Union and the 47 county governments.
8. The Interested Party is cajoled to exercise good faith and refrain from unduly benefitting from members who have willfully chosen to migrate to the Applicant Union. Any action to the contrary will be inimical to harmonious and good labour relations in the public Service.
9. The prayer for refund of deductions made to the Union of Kenya Civil Servants(UKCS) is refused for want of proof.
10. The Application is dismissed with no order as to costs.

Dated and Delivered at Nairobi this 25th day of February, 2015.

MATHEWS N. NDUMA

PRINCIPAL JUDGE