



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAKURU**

**CAUSE NO. 642 OF 2014**

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

**v**

**THE PUBLIC SERVICE COMMISSION.....1<sup>ST</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

**THE MINISTRY OF HEALTH.....3<sup>RD</sup> RESPONDENT**

**UASIN GISHU COUNTY PUBLIC SERVICE BOARD.....4<sup>TH</sup> RESPONDENT**

**RULING**

1. The Kenya National Union of Nurses (Union) filed a Memorandum of Claim against the Respondents on 8 December 2014 seeking orders that

1. Expiry of Contract letters issued to the Grievants herein dated 20<sup>th</sup> August, 2014 terminating their contracts be withdrawn.
2. The Grievants be compensated for the underpayments suffered while doing the same job like their colleagues and earning less and the same be paid their (*sic*) salaries and allowances for the months they have not earned.
3. ESP nurses and other health workers on contract be confirmed/absorbed into permanent and pensionable terms of employment.
4. The court issues permanent injunction against the Respondent not to subject the Grievants to fresh renewal of contracts, signing of job evaluation forms and/or underpayments.
5. Any other relief the court deem fit and just to grant.
6. Costs of this suit be borne by the Respondents.

2. Together with the Memorandum of Claim was a motion under certificate of urgency seeking partly,

interim order of stay of 'Expiry of Contract' letters REF NO: UG/COH/ESP STAFF/3/14 dated 20<sup>th</sup> August, 2014 issued to ESP nurses and other health workers;

interim orders of stay of eviction of ESP health workers in Uasin Gishu County from staff quarters;

interim injunctive orders directing the Respondents not to advertise vacancies for the purpose of replacing the ESP Nurses and other health workers who have been released from duty...

3. The motion was certified urgent and it was served upon the Respondents. The 3<sup>rd</sup> Respondent filed a Replying Affidavit with several annexures on 18 December 2014, while the 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed Grounds of Opposition on 19 December 2014.

4. The parties made submissions on 19 December 2014.

5. It is not in dispute that the Grievants were employed by the Government of Kenya through an Economic Stimulus Program on contractual terms. They were employed in two phases. The nurses who were employed during the first phase were all absorbed by the government into permanent and pensionable terms (see letter by Principal Secretary, Ministry of Health dated 15 August 2013).

6. On 24 January 2014, the Cabinet Secretary Ministry of Health wrote to the Governor, Uasin Gishu requesting him to have the 27 Grievants absorbed by the County Government into permanent and pensionable terms. A further letter by the Principal Secretary was written to all County Secretaries in Kenya on 7 August 2014.

7. However, on 20 August 2014, the County Government of Uasin Gishu wrote to the Grievants informing them that the County Government had decided to release them because their contracts had expired (between May and July 2014), and because they had refused to be evaluated.

8. The Union, through the present motion seeks that the expiry letters be stayed and that the Respondent be stopped from evicting the Grievants from the staff quarters allocated to them. The Union further seeks an interim order stopping the Respondent from recruiting replacements to the Grievants.

9. The Court has considered the motion and the submissions and come to the following conclusions.

10. The Grievants were informed of their release in August 2014 and only came to Court in December 2014. This delay has not been explained. The release of the Grievants is now a *fait accompli*. It would not be appropriate to order 'stay of expiry of contract letters'.

11. In the event the Court finds that the 3<sup>rd</sup> Respondent had been directed to absorb them but declined, appropriate relief will be granted after hearing both parties on the merit.

12. On the eviction issue, the Union has not demonstrated who among the Grievants was given housing accommodation by the 3<sup>rd</sup> Respondent and who were getting housing allowance in lieu of housing.

13. Lastly, granting an order stopping replacements of the Grievants would be an order at large and would unnecessarily interfere with the performance of a state organ with its functions.

14. It had been alleged that there is a pending Cause before Court involving the same parties and involving the same issues being Nairobi Cause No. 1215 of 2014, *Kenya National Union of Nurses v the Public Service Commission & 3 others*. This Cause was withdrawn before it was heard and nothing turns on it.

15. Reference was also made to Nakuru Cause No. 470 of 2014, *County Government of Uasin Gishu v Kenya National Union of Nurses*. The Court has looked at the file and it appears that Cause related to a threatened strike action, not an issue in the instant Cause.

16. The Court in the event finds that it is not appropriate to grant the prayers sought in the motion dated 8 December 2014, and orders that it be dismissed with no order as to costs.

17. Because of the nature of the Cause herein, the Court directs that the parties prepare to have it heard on a priority basis on a date convenient to the parties and the Court after the taking of directions.

**Delivered, dated and signed in Nakuru on this 13<sup>th</sup> day of February 2015.**

**Radido Stephen**

**Judge**

**Appearances**

For Union Mr. Omulama, Industrial Relations Officer, Kenya National Union of Nurses

For 1<sup>st</sup> and 2<sup>nd</sup> Respondents Mr. Nguyo, Senior Litigation Counsel, office of the Attorney General

For 3<sup>rd</sup> Respondent Mengich & Co. Advocates