



**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 ACTING FOR**

**THE MINISTRY OF HEALTH .....2<sup>nd</sup> RESPONDENT**

**UASIN GISHU COUNTY PUBLIC SERVICE BOARD..... 3<sup>rd</sup> RESPONDENT**

**JUDGMENT**

1. The Kenya National Union of Nurses (Union) commenced legal proceedings against the Respondents on 8 December 2014 and the issue in dispute was stated as *unlawful, wrongful, unfair and unprocedural termination of services of ESP Nurses and other health workers by the 3<sup>rd</sup> Respondent*.
2. Together with the Memorandum of Claim, the Union filed a motion under certificate of urgency seeking various interlocutory reliefs. The Court certified the motion urgent and directed that it be served for *inter partes* hearing.
3. The Memorandum of Claim and motion were served upon the Respondents and the Honourable the Attorney General filed Grounds of Opposition to the motion and also entered appearance and filed a Joint Response for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. The firm of Mengich & Co. Advocates filed a Replying Affidavit to the motion and a Reply on behalf of the 3<sup>rd</sup> Respondent.
4. The Court heard the parties on the motion and in a ruling delivered on 13 February 2015, it declined to issue the injunctive orders sought but directed that the Cause be heard on a priority basis.
5. On 19 May 2015, the parties suggested and the Court agreed that the Cause be determined on the basis of the record and written submissions.
6. Towards this end, the Union filed its submissions on 29 May 2015. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents submissions were filed on 9 June 2015 while the 3<sup>rd</sup> Respondent filed its submissions on 19 June 2015.
7. The submissions were highlighted on 9 July 2015 and judgment was reserved to 20 November 2015.

8. In the interlude, the parties caused the Cause to be mentioned on 16 July 2015 and the 1<sup>st</sup> and 2<sup>nd</sup> Respondents sought leave to file further documents. The Court allowed the documents to be filed and served upon all the parties and the same was done with a mention set for 28 July 2015.

9. Although served (affidavit of service was on record), the 3<sup>rd</sup> Respondent did not appear during the mention.

10. Because of the nature of the documents filed, the Court brought back the date for delivery of judgment to 30 October 2015.

11. In the further document filed by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, it is clear that the parties had reached a compromise. The document is the minutes of the Resolutions of the Consultative Committee on Health Workers Issues held on 11 February 2015.

12. The minutes show that the deliberations were held by a Technical Committee on Health Workers Issues comprising of Governors, Ministry of Health, Transition Authority, National Treasury, Directorate of Public Service Management and Public Service Commission and that the Consultative Committee adopted the recommendation that the Council of Governors do issue a Circular to the 16 Counties to absorb the health staff.

13. 16 counties had not absorbed the ESP health workers on expiry of their contracts (3<sup>rd</sup> Respondent included) and the recommendations and resolutions which were mutually adopted with the participation of the Council of Governors which must have had the ostensible authority of all the Counties would bind them (the Court notes that the Council of Governors is a statutory creature).

14. The Court in this regard finds and holds that the 3<sup>rd</sup> Respondent should absorb and confirm the ESP health staff whose contracts expired on 20 August 2014.

15. And because the financial implications were not disclosed to the Court, the Court further directs that the ESP health staff be deemed as having been absorbed from 12 February 2015, this being the date the resolution to absorb the staff was reached.

16. From the documentation produced in Court, it is clear that the 3<sup>rd</sup> Respondent and other counties had been directed to absorb the ESP health staff way back in January 2014 but for unexplained reasons there was no compliance.

17. For this reason, the Court orders the 3<sup>rd</sup> Respondent to bear the Union's costs assessed as Kshs 50,000/-.

**Delivered, dated and signed in Nakuru on this 30<sup>th</sup> day of October 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 Mr. Kibet instructed by Mengich & Co. Advocates

Court Assistant Nixon