



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

**VERSUS**

**THE ATTORNEY GENERAL ACTING FOR:**

**1. THE PUBLIC SERVICE COMMISSION**

**2. THE MINISTRY OF MEDICAL SERVICES, AND**

**3. THE MINISTRY OF PUBLIC HEALTH AND SANITATION.....1ST**  
**RESPONDENT**

**AND**

**THE UNION OF KENYA CIVIL SERVANTS..... 2<sup>ND</sup>**  
**RESPONDENT**

**RULING**

The Claimant has filed a labour relations dispute challenging the lawfulness and the unconstitutionality of trade union deductions from the salary of public nurses by their employer (1<sup>st</sup> Respondent) for the benefit of the Union of the Civil Servants (2<sup>nd</sup> Respondent).

In the meanwhile, the Claimant has filed a Notice of Motion dated 12-6-2012 seeking injunction order to restrain the 1<sup>st</sup> Respondent from effecting the deduction from the Public Nurses' salary in the name of Union Dues or otherwise Agency Fee in favour of the 2<sup>nd</sup> Respondent with effect from the month of June, 2012 until hearing and determination of the main dispute herein. No evidence has however been provided to prove that the deductions have not been effected so far.

The application has been opposed by the 2<sup>nd</sup> Respondent vide a reply affidavit sworn by Tom Odege on 6-7-2012. The said affidavit has raised serious issues including lack of legal personality, *locus standi* and material non-disclosure on the part of the claimant in his application.

The 1<sup>st</sup> Respondent chose not to file any reply but nevertheless addressed the court on ground of law in reply to the application. On the day of hearing the application, I asked the applicant whether he wished to file response to the issues raised by the respondents in order to provide particulars but the advise was not welcomed by the applicant's representative, Mr. Seth Panyako.

When he stood to argue the application, he avoided the Notice of Motion as filed and made references to Legal Notice Number 1201 of 2005 and Gazette Notice number 1511 of 15<sup>th</sup> February, 2011 to persuade the court to declare the Union deduction in issue to be null and void. The said reference to

documents not in the pleadings elicited objection from the respondents. I nevertheless allowed the said documents to be referred to and relied upon for whatever their worth.

Mr. Ligunya for the 2<sup>nd</sup> Respondent vehemently opposed the application relying on the replying affidavit by his client. The main issues raised by the defence included capacity, *locus standi* and material non-disclosure.

Miss Wanjala for the 1<sup>st</sup> Respondent relied on the same grounds of law as Mr. Ligunya.

**UPON PERUSING** the pleadings, filed so far **AND UPON CONSIDERING** the submissions by the parties, I have come into the conclusion that serious issues of law have been raised by the respondents in opposing the application.

This court will not wish away the said Legal concerns by the learned counsel who are vital help to the court in dispensing justice. Having so concluded, this court does not however, overlook the constitutional obligation of dispensing justice without undue regard to the legal technicalities.

The legal issue of capacity to sue and the *locus standi* are cardinal in Labour relations and that is why the legislation in its wisdom specification legislated the Labour Relations Act No. 14 of 2007. Section 21 of the said Act is crystal clear that a trade union is intended to be a body corporate. The corporate personality of the Union can only occur upon a successful registration and issuance of a Certificate by the Registrar of Trade Unions.

The applicant did not prove that it is a duly registered trade union to represent nurses. Nothing was difficult in producing a copy of the registration certificate if any was available.

On the other hand, the *locus standi* of any organisation to sue for its members in its own name is derived from the corporate personality through registration. The capacity to sue accrues after a Certificate is issued to the Union by the Registrar of Trade Unions. Without such capacity to sue, any purported proceedings filed by an amorphous association are just a nullity. Consequently, I do not hesitate to find and hold that the Notice of Motion is incompetent, null and void for the foregoing reasons. I also hold that the deliberate failure to prove the registration and therefore the existence of the Claimant as a juristic person is a material non-disclosure which has left this court with no other option but to dismiss the application with costs.

I will not deal with the merits of the Motion.

**Orders accordingly.**

**DATED** and **DELIVERED** in Nairobi on this 31<sup>st</sup> day of July, 2012.

**Onesmus Makau**

**JUDGE**