



REPUBLIC OF KENYA

INDUSTRIAL COURT AT NAIROBI

CAUSE 1525 OF 2012

KENYA MEDICAL PRACTITIONERS

PHARMACISTS AND DENTISTS' UNION.....Claimants

Vs.

KENYATTA NATIONAL HOSPITAL1st Respondent

MATHARI MENTAL HOSPITAL.....2nd Respondent

MINISTER FOR MEDICALS SERVICES.....3rd Respondent

THE ATTORNEY GENERAL4th Respondent

RULING

On 30th August, 2012, Kenya Medical Practitioner Pharmacists and Dentists' Union moved to Court under a Certificate of Urgency seeking several orders.

Amongst the orders which were granted was Prayer No. C of the Motion which restrained the 1st to 3rd Respondents from dismissing any of the claimant members who were participating in a strike called by the Claimant Union.

The motion was fixed for hearing *inter partes* on 13th September 2012.

Before the *inter partes* hearing scheduled for 13th September 2012 could be heard, the Claimant Union filed another urgent application dated 6th September, 2012 seeking leave to commence contempt proceedings against the Respondents for violation of the Orders issued on 30th August, 2012.

The second application was placed before the Duty Judge on 7th September, 2012 who ordered that the *status quo* be maintained, but otherwise declined to grant leave to commence the contempt proceedings.

In all respects then, the contempt application dated 6th September, 2012 is spent and the only active application on file is the initial motion seeking injunctive relief in Court on 30th August, 2012.

The motion was placed before me on 13th September, 2012 when I was the Duty Judge. The Motion was

coming up for *inter partes* hearing.

In the course of sitting on 13th September, 2012, the Court became aware of other proceedings which had been filed and the issues therein were also in issue in this particular proceedings.

In one of this other proceedings, Cause No. 1618 of 2012 the Hon. The Attorney General had moved the Court seeking orders to stop a strike action which had been called by the Claimant Union on several grounds amongst them that the members of the Claimant Union were engaged in what qualifies for essential services as defined in the Labour Relations Act and, therefore, the strike action was illegal. The Court granted the prayers sought by the Honourable the Attorney General and ordered that the parties be served to appear before the Court on 14th September, 2012 to explore ways of handling the Causes as similar issues had been raised.

The third Cause which was affected by the Order made was Cause No. 1617 of 2012.

The thread running through all the Courts was the Return to Work Formula signed in December, 2011.

On 14th September, 2012 the Court ordered all the parties to appear before it on 17th September, 2012, with names of appropriately authorised officers who were to constitute a Committee to negotiate an end to the strike called by the Union under the Supervision of the Court.

On 17th September, 2012, Mr. Kiarie appeared on behalf of the Union, Mr. Ashitiva for the 1st Respondent while Ms. Kahara appeared on behalf of the 2nd – 4th Respondents.

Mr. Kiarie did not appear ready to proceed because he had been served with documents from the Respondents and he had not got the opportunity to put his papers on record in response. Indeed the Court had earlier on granted him leave to file any supplementary responses.

On 14th September, 2012, the Court had granted leave to the Honourable the Attorney General to serve the Claimant Union and its officials through substituted service in the print media and the Court was informed that service had been effected in the Sunday Standard of 16th September, 2012 and the Standard of 17th September, 2012.

All the parties in Causes No. 1617 of 2012, and Cause No. 1618 of 2012 indicated to the Court that they had got names of nominees to sit in a negotiating Committee, except for the Ministries of Finance, Labour and Public Service due to the limited time available from when the orders were granted.

However, for the Claimant Union, the Union officials were not in Court though a Dr. Masika had appeared in Court on 14th September, 2012 and informally informed the Court that he was a Union official.

Those are some brief facts but not all the facts of the situation as it prevails as of 17th September, 2012.

However, the more cardinal issue is that there are two different orders which have been issued and which cannot co-exist together. In Cause No. 1618 of 2012, there is an order stopping the strike called by the Claimant Union and in the instant Cause No. 1525 of 2012, there is an order stopping the dismissal of the Claimant Union members for participating in the strike.

The genesis of the strike in both instances is grounded on the implementation or lack thereof of the Return to Work Formula reached between the Claimant Union and Government in December, 2011.

Stopping or restraining the dismissal of Claimants members on the basis of their participation in the strike pre supposes that the strike action is legal. On the other hand there is an order of the Court stopping the strike. One of those orders must give way. They cannot co-exist.

The Court had on 14th September, 2012 ordered that the orders issued in Cause No. 1525 of 2012, Cause No. 1617 of 2012 and Cause No. 1618 of 2012 be extended till 17th September, 2012.

If all the parties had attended Court as scheduled on 17th September, 2012, the parties could have clarified the issue of multiplicity of suits and agreed on a mutually convenient way forward. But that is now water under the bridge.

This Court has in the very recent past witnessed an avalanche of suits in which similar issues of fact and law are brought by the same parties but using different firms of Advocates. The effects are starting to be felt. This instant case of the medical practitioners strike is but one instance.

The role of the Court has been clearly set out in the Industrial Court Act 2011. While acknowledging that this Court can still be referred to as an “infant” having been operationalised only in July 2012, the Court must carve for itself an appropriate role in the industrial relations sphere. It must ensure that its orders are obeyed and complied with.

The objective of furtherance, securing, and maintenance of good labour relations is paramount in how the Court carves its proper role in the society. Having a multiplicity of suits with the same subject matter between essentially the same parties wherein contradictory orders are given cannot be conducive to the furtherance, securing and maintenance of good industrial relations.

Again, the pendency of several suits involving the same parties over the same issues cannot facilitate the just and expeditious resolution envisaged under Section 3 of the Industrial Court Act, 2011.

Indeed having a multiplicity of suits may amount to abuse of the Courts’ process.

Another significant factor which this Court has considered is that in the Memorandum of Claim filed on 30th August, 2012, the Claimant Union is seeking the intervention of this Court to compel the Respondents to implement the Return to Work Formula entered into in December, 2011. The question that begs an answer is whether it is open to the Claimant Union to approach the Courts seeking its intervention to have the Return to Work Formula enforced while at the same time it has called a strike running parallel with the Court action.

Equity will not allow the Claimant Union to have it both ways. The inherent powers of the Court as embodied in Rule 36 of the Industrial Court (Prodedure) Rules 2010 therefore comes into play.

I am acutely aware that this Cause was filed before Cause No. 1617 of 2012 and Cause No. 1618 of 2012 were filed. And this factor is material to the order I am going to make. The conduct of the Claimant Union leaves me with no alternative other than to order that this *Cause No. 1525 of 2012, Kenya Medical Practitioners, Pharmacists & Dentists Union v. Kenyatta National Hospital, Mathari Mental Hospital, Minister for Medical Services and the Hon. Attorney General* be stayed pending the hearing and determination of Cause No. 1618 of 2012 and Cause No. 1617 of 2012.

The orders given on 30th August, 2012 and extended thereafter are also ordered to be vacated.

There will be no order as to costs.

Dated and delivered at Nairobi this 18th day of September 2012, in the presence of Mr. Kiarie for Claimant Union, Mr. Ashitiva for 1st Respondent.

Justice Radido Stephen

Judge