



St Mary’s Mission Hospital v Kenya Medical Practitioners & Dentists Board; Achieng (Interested Party) (Civil Appeal E164 of 2022) [2022] KEHC 12550 (KLR) (Civ) (25 August 2022) (Ruling)

Neutral citation: [2022] KEHC 12550 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E164 OF 2022

JK SERGON, J

AUGUST 25, 2022

BETWEEN

ST MARY’S MISSION HOSPITAL APPELLANT

AND

KENYA MEDICAL PRACTITIONERS & DENTISTS BOARD RESPONDENT

AND

BELINA ACHIENG INTERESTED PARTY

(Emanating from a ruling delivered by the Disciplinary and Ethics Committee of the Medical Practitioners and Dentist Council dated 21st February, 2022 in PIC case 52 of 2019)

RULING

1. The subject matter of this ruling is the amended notice of motion dated April 1, 2022 in which St Mary’s Mission Hospital Nairobi, the appellant herein, sought for *inter-alia*, an order for stay of execution of the ruling delivered by the disciplinary and ethics committee of the Medical Practitioners And Dentist Council hereinafter referred as the ‘council’ dated February 21, 2022 in PIC case 52 of 2019 – Prof Kiama Wangai & Co Advocates on behalf of Belina Achieng Otieno vs St. Mary’s Mission Hospital, Nairobi, pending appeal.
2. The appellant filed the affidavit sworn by Victoria Wahu in support of the motion.
3. Interested party namely Belina Achieng filed the replying affidavit she swore to oppose the motion. The respondent did not deem it fit to file any response to the aforesaid motion.



4. It is the submission of the appellant that the disciplinary and ethics committee of Kenya Medical Practitioners And Dentists Council delivered a decision on January 21, 2021 which decision was forwarded to the appellant's advocate on March 3, 2022 by email.
5. The appellant avers that the decision is detrimental to the appellant in that the same infringes upon the parties' constitutional rights to resolve their dispute through a mechanism of their choice. It is said that the ruling was delivered while the parties were negotiating for an out of court settlement. The appellant further stated that it may suffer irreparable harm if the ruling is enforced.
6. The interested party opposed the application stating that there is nothing which can be stayed or set aside since the decision found the respondent professionally negligent.
7. The principles to be considered in determining an application for stay are well settled. The first principle is that an application for stay must be filed without unreasonable delay. The decision or ruling sought to be impugned was delivered on February 21, 2022. The appeal was filed on March 21, 2022 while the instant application was filed on April 1, 2022. I find that the amended motion was filed without unreasonable delay.
8. The second principle is that an applicant must show the substantial loss it would suffer if the order for stay is denied. The applicant has averred that the committee failed to give the parties an opportunity to resolve their dispute through a mechanism of their choice thus infringing upon their constitutional right.
9. The appellant further averred that it stands to suffer irreparable financial loss and prejudice should the ruling be allowed to be executed as its operating licenses stand to be suspended, withdrawn or cancelled.
10. A careful perusal of the ruling of the council will show that the appellant was required to *inter alia* pay a fine of ksh 250,000/= to the council within 30 days from the date of the ruling and to also initiate a mediation process with the Interested party within 120 days from the date of the ruling. In default, the appellant's operating licenses shall be suspended, withdrawn or cancelled.
11. It is clear in my mind that unless an order for stay of execution of the decision of the council is granted, the appellant will suffer substantial loss in that its operating licenses are likely to be withdrawn, suspended or cancelled. This is a case which fits to grant temporary orders for stay of execution.
12. The third and final principle is the provision of security for the due performance of the decree. The appellant has promised to abide by any conditions imposed by the court.
13. In the end, I find the amended motion dated April 1, 2022 to be meritorious. It is allowed. Consequently an order for stay of execution of the ruling/order delivered on February 21, 2022 vide PIC case no 52 of 2019 is allowed pending appeal on condition that the appellant deposits a sum of ksh 200,000/= in court within a period of 45 days and in default, execution to issue. Costs of the motion to abide the outcome of the appeal.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS
25TH DAY OF AUGUST, 2022.**

.....

J. K. SERGON

JUDGE

In the presence of:



..... for the Applicant

..... for the Respondent

