



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**MILIMANI LAW COURTS**

**CIVIL MISC APPL. NO. 789 OF 2019**

**DR. NELSON WACHIRA.....1<sup>ST</sup> APPLICANT**

**VINEYARD HOSPITAL .....2<sup>ND</sup> APPLICANT**

**-VERSUS-**

**PROF. KIAMA WANGAI & CO. ADVOCATES**

**ON BEHALF OF JOSEPH NDIRANGU.....RESPONDENT**

**RULING**

1) Dr. Nelson Wachira and Vineyard Hospital, the 1<sup>st</sup> and 2<sup>nd</sup> applicants respectively took out the motion dated 13<sup>th</sup> December 2019 whereof they sought for leave to appeal against the ruling of the Preliminary Inquiry Committee delivered on 9<sup>th</sup> September 2019 vide Preliminary Committee Case no. 21 of 2017. When served, Prof. Kiama Wangai & Co. Advocates, the respondent herein filed a preliminary objection to have the application struck out arguing that the law firm was wrongly sued.

2) The preliminary objection had to be determined first. It is the submission of the respondent that the law firm was not the complainant before the Medical Practitioners and Dentists Committee, but instead, the firm appeared for one Joseph Ndirangu. The respondent argued that the law does not permit for a law firm to be sued or made a party in an action it appeared as representing one of the parties.

3) Mr. Magani, learned advocate who appeared for the applicants in response stated that the respondent was made a party to the instant application because the ruling of the Preliminary Inquiry Committee had indicated the law firm of Prof. Kiama Wangai & Co. Advocates on behalf of Joseph Ndirangu. The learned advocate beseeched this court to allow the applicants to amend the motion to include the real party.

4) It is not disputed that the law firm of Prof. Kiama Wangai & Co. Advocates is cited as the respondent on behalf of Joseph Ndirangu in this application. A cursory look at the ruling of the Preliminary Inquiry Committee will reveal that the firm of Prof. Kiama Wangai & Co. Advocates actually represented Joseph Ndirangu, the complainant before the Medical Practitioners and Dentist committee in the Preliminary Inquiry Committee.

5) It is also not in dispute that the respondent was named as a party thus misleading the applicants to name the law firm as a party. The applicants have urged this court not to strike out their application, but to instead, allow them to amend the same.

6) I am convinced that the applicants' proposal makes sense. The applicants made a genuine mistake which can be corrected by way of amendment.

7) In broad interest of justice, I decline to strike out the application but instead and in exercise of this court's inherent power, I grant the applicants leave of 10 days to amend the application by deleting the name of Prof. Kiama Wangai & Co. Advocate and substitute it with the name of the correct party.

8) Each party to meet its own costs of the preliminary objection.

Dated, Signed and Delivered online via Microsoft Teams at Nairobi this 21<sup>st</sup> day of May, 2021.

.....

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Applicant

..... for the Respondent