



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL CASE NO.125 OF 2014

PETERSON MWANGI.....PLAINTIFF

VERSUS

MARIE STOPES KENYA.....DEFENDANT

RULING

1. The Plaintiff herein instituted this suit against the Defendant claiming damages for alleged medical negligence. The Defendant filed Preliminary Objection dated 7th July, 2014 on the grounds **that this honourable court has no jurisdiction to hear and determine this case with particular reference to Section 20 of the Medical Practitioners and Dentists Act, Cap 253 laws of Kenya and Rule 5 of the Medical Practitioners and Dentists (Disciplinary proceedings) (Procedure) Rules.**

2. The Preliminary Objection was canvassed by way of written submissions which I have considered.

3. Section 20 (1) of the Medical Practitioners and Dentists Act cap 253 Laws of Kenya provides for disciplinary proceedings: Section 20 (1) provides as follows:

“Any person who is dissatisfied with any professional service offered, or alleges a breach of standards by a registered or licensed person under this Act, may lodge a complaint in the prescribed manner to the counsel.”

4. Rules 5 of the Medical Practitioners and Dentists Act (Disciplinary proceedings) provides for disciplinary proceedings.

5. There is nothing in the said provisions that ousts the jurisdiction of this court.

6. As stated in the celebrated case of **Mukisa Biscuits Manufacturing Co Ltd Vs West End Distributors (1969) EA 696:**

“...a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

Sir Charles Newbold P. added as follows at page 701:

A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”

7. It is submitted by the Defendant’s counsel that Cap 253 of the Laws of Kenya gives the medical Practitioners and Dentists Board the statutory duty to carry out inquiries in cases involving Medical Practitioners and dentists. The Defendant relied on the case of **Dr. JagdishSonigra v Medical Practitioners and Dentists Board & 2 other [2008] eKLR** where it was held, *inter alia*, that the said Board had the duty to carry out inquiries to keep it’s professionals in check. The court then proceeded to hold that it could not stop the inquiry.

8. In the case at hand, whether the Plaintiff will discharge the burden of proof is a question of facts. The facts herein are in dispute and are

yet to be ascertained. The preliminary objection herein cannot therefore be upheld.

9. With the foregoing, the Preliminary Objection is dismissed with costs.

Date, signed and delivered at Nairobi this 29th day of May, 2020

B. THURANIRA JADEN

JUDGE