



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NO. 376 OF 2011

DR. ANGELA MULIRO CHEKOKO.....APPELLANT

-VERSUS-

THE MEDICAL PRACTITIONERS AND DENTIST BOARD.....RESPONDENT

RULING

1) On 11th July 2011 the Medical Practitioners and Dentists Board delivered its decision against **Dr. Angela Muliro Chekoko**, the appellant herein in the following terms:

- i. The practitioner, Dr. Angela Muliro Chekoko, be and is hereby suspended for a period of six (6) months from the date hereof.*
- ii. The practitioner, Dr. Angela Muliro Chekoko, shall do remedial training at the Kenyatta National Hospital attached to the Department of Obstetrics and Gynaecology of the University of Nairobi under the direct supervision of Professor Shadrack Booker Ojwang' and Professor Patrick Muia Ndavi for a period of six (6) months from the date hereof.*
- iii. Professor Shadrack Booker Ojwang' and Professor Parick Muia Ndavi do furnish the Board with progress reports on a monthly basis until lapse of the six (6) months period at the end of which they should give a comprehensive report of the aforesaid practitioner.*
- iv. The reinstatement of the practitioner, Dr. Angela Muliro Chekoko shall depend on the comprehensive report by professor Shadrack Booker Ojwang' and Professor Patrick Muia Ndavi.*
- v. The practitioner, Dr. Angela Muliro Chekoko, shall pay kshs.200,000.00 being part-costs for the sitting of the Tribunal within thirty (30) days from the date hereof.*

2) Being aggrieved by the Board's decision, the appellant preferred the appeal.

3) On 4th October 2011 a consent order for stay of execution pending appeal was recorded. A Notice to Show Cause (N.T.S.C) dated 2nd October 2019 as to why the appeal should not be dismissed was issued. The N.T.S.C is the subject matter of this ruling.

4) The appellant filed a replying affidavit to show cause why this appeal should not be dismissed. This court directed the parties to file written submissions.

5) It is the submission of the respondent that the appellant's appeal should be dismissed for want of prosecution. It is argued that the appellant has lost interest in pursuing this appeal. It is pointed out that the appellant has never set down the appeal for hearing since it was filed on 4th February 2011, a period of eight (8) years, prompting this court to issue a notice to show cause.

6) The Board further stated that it supplied the appellant with typed record of proceedings which is complete, accurate and sufficient for the appellant to proceed with her appeal. The Board also pointed out that the

appellant's claim for audio tapes is unmerited because she is in possession of complete and accurate typed records. The Board argued that the appellant's assertion is a delaying tactic to slow the prosecution of the appeal.

7) The appellant urged this court not to dismiss the appeal. She gave a detailed narrative of what has been happening in the matter. She indicated that the Deputy Registrar of this court wrote to the Board the letter dated 10th April 2018 in which the Board was requested to supply to this court the following documents:

a) The respondent's original record.

b) Typed copies and certified of the proceedings and judgment.

c) Pleadings and exhibits if any

d) Certified copy of an extracted decree/order.

8) It is the submission of the appellant that the documents requested by the Deputy Registrar are necessary to be supplied before the appeal is admitted to hearing. The appellant averred that the respondent's (Board's) failure or refusal to supply them of to this court with the requested documents is the main cause for the delay.

9) The appellant further submitted that she has demonstrated her diligence to prosecute the appeal vide the various correspondences she exchanged with the Deputy Registrar. It was pointed out that on 25.9.2015, the respondent's advocates conceded that they had not provided the appellant all the documents.

10) Having considered the rival submissions, it is apparent that the main reason the appellant has advanced to beseech this court not to dismiss the appeal is that the Board has not supplied to this court the Board's original record to enable her compile and file the record of appeal.

11) In response, the respondent stated that the appellant was part of the proceedings before it, hence her claim for audio tapes does not stand because she has in her possession complete and accurate typed records. The Board does not expressly deny that it has not supplied copies of the records to Deputy Registrar of this court.

12) The respondent does not also deny failing to supply the audiorecording as requested. The Board does not state that it does not possess the documents requested. The material placed before this court seem to suggest that the appellant has failed to prepare the record of appeal because she has not been supplied with the records of the Board.

13) It is also apparent that this court has not too been supplied with those records. I am convinced that the appellant has demonstrated that she is still keen in pursuing this appeal. In the circumstances, I decline to dismiss the appeal.

14) However, in order to avoid this appeal procrastinating further I issue the following orders and directions:

i. The Board (respondent) is hereby directed to supply this court with the documents requested by the Deputy Registrar of this court vide the letter dated 10.04.2018 within 30 days from the date hereof. i.e

a) Board's original Record with pleadings and exhibits

b) Typed and certified proceedings and judgment

c) Certified copy of an extracted decree/order appealed against.

ii. The Deputy Registrar of this court to inform the parties of the respondent's compliance with order (i) hereinabove.

iii. The appellant to file and serve the record of appeal within 60 days from the date hereof.

iv. Mention on 30.3.2021 for further orders and directions.

Dated, Signed and Delivered online via Microsoft Teams at Nairobi this 17th day of December, 2020.

.....

J. K. SERGON

JUDGE

In the presence of:

..... for the Appellants

.....for the Respondents