



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL DIVISION**  
**CIVIL NO 451 OF 2013**

1. DR PAUL M. KITHINJI  
2. DR BILLY MUIGA GITAU.....APPELLANTS

VERSUS

J A K.....RESPONDENT

**R U L I N G**

1. The appeal herein is against the decision of the *Medical Practitioners and Dentists Board* (sitting as a **Tribunal**) delivered on 24<sup>th</sup> July 2013. By that decision the Board found the Appellants respectively guilty of the following charges laid against them -

**1<sup>st</sup> Appellant Dr. Paul M Kithinji**

**Charge One:**

**That being a medical practitioner registered under the *Medical Practitioners and Dentists Act, Cap 253* (hereinafter called the Act), he engaged in private practice on or about 1<sup>st</sup> March 2011 at the *Victory Hospital Limited* without a license for private practice in contravention of section 15 of the Act.**

**Charge Two:**

**That being a medical practitioner, and having admitted Baby J, daughter of J A K (the Respondent), under his care at the *Victory Hospital Limited*, failed to exercise reasonable care and skill in operation on the patient, thereby contributing to the said child's death.**

**Charge Three:**

**That being a medical practitioner, failed to make appropriate pre-operative assessment of the patients J A K and Baby J at the *Victory Hospital Limited*, leading to improper care and treatment which ultimately contributed to the death of Baby J.**

**Charge Four:**

**That being a medical practitioner, failed to take steps to adequately and timely advise**

and/or consult a surgeon and/or specialist while treating and managing patients J A K and Baby J, therefore contributing to the child's death.

**Charge Five:**

That being a medical practitioner, disregarded the written and unwritten rules of the profession in the management and treatment of Baby J on or about 1<sup>st</sup> March 2011 at the Victory Hospital Limited.

**2<sup>nd</sup> Appellant Dr. Billy Muigai Gitau (on behalf of Victory Hospital Limited)**

**Charge One**

That being a medical practitioner and the manager in charge of Victory Hospital Limited, he allowed the hospital to be run and operated on or about 1<sup>st</sup> March 2011 in a way that contributed to the death of Baby J, daughter of the Respondent.

**Charge Two:**

That being a medical practitioner and the manager in charge of Victory Hospital Limited, he allowed a medical practitioner registered under the Act to admit and/or treat patients at an institution that lacked appropriate facilities on or about 1<sup>st</sup> March 2011 in a way that contributed to the death of Baby J, daughter of the Respondent.

**Charge Three:**

That being a medical practitioner and manager in charge of Victory Hospital Limited operated the institution in violation of the *Medical Practitioners and Dentists (Private Medical Institutions) Rules, 2000*.

2. The Board meted out the following punishments -

**As against 1<sup>st</sup> Appellant:**

- i. Strongly admonished him “for failing to conduct pre-operative examination and post-operative follow-up of the patient, and for failing to consult a pediatrician as the Complainant delivered before due date, raising the possibility of prematurity”.
- ii. Directed that in the future the 1<sup>st</sup> Appellant “should restrict himself to general practice, and if he is to do surgical procedures, he needs to ensure that appropriate clinical evaluations and necessary consultations are done under circumstances of each case”.
- iii. Directed the 1<sup>st</sup> Appellant “to ensure that he complies with the Board’s Continuing Professional Development (CPD) requirements and renew his licenses within the required period”.
- iv. Ordered the 1<sup>st</sup> Appellant to pay to the Board the sum of KShs 300,000/00 within a period of 30 days from the date of the decision as part of the costs of the Tribunal’s sittings.

**As against 2<sup>nd</sup> Appellant:**

- i. Strongly admonished him “for operating a medical institution which lacked adequate medical facilities, particularly a functioning suction machine and incubator...”.

- ii. **Admonished “for engaging the services of an unlicensed medical personnel at the Victory Hospital in Nairobi to manage patients, which contributed to the death of Baby J”.**
- iii. **Directed the 2<sup>nd</sup> Appellant to employ an experienced medical doctor to work on a full-time basis, and to be in charge of Victory Hospital in Nairobi. This to be done within a period of 30 days from the date of the decision, and to report back to the Board within a further seven (7) days thereafter.**
- iv. **Directed the 2<sup>nd</sup> Appellant to employ an experienced nursing officer to work at the Victory Hospital in Nairobi on full-time basis within 90 days from the date of the decision, and thereafter to report back to the Board to confirm compliance.**
- v. **Directed the 2<sup>nd</sup> Appellant “to put in place detailed and documented clear operational and referral systems for Victory Hospital in Nairobi within a period of 90 days” from the date of the decision, and thereafter report to the Board to confirm compliance.**
- vi. **Ordered the 2<sup>nd</sup> Appellant to pay to the Board KShs 600,000/00 within 30 days of the decision as part of the costs for the Tribunal’s sittings.**
- vii. **Directed the 2<sup>nd</sup> Appellant, “on behalf of Victory Hospital in Nairobi, to initiate mediation with the Complainant, with a view to compensating the Complainant”, and thereafter report back to the Chairman of the Board within 60 days of the decision.**

3. The Appellants filed their **memorandum of appeal** on 21<sup>st</sup> August 2013. On 9<sup>th</sup> September 2013 they filed a notice of motion of the same date seeking the main order of stay of the decision of the Board pending hearing and determination of their appeal. The only ground for the application appearing on the face thereof is that the Board **“may cancel the licenses of the Appellants and close down Victory Hospital”**. In the supporting affidavit sworn by the 2<sup>nd</sup> Appellant the following further grounds emerge -

(i) That the Board’s decision, if implemented, shall render the appeal academic.

(ii) That if Victory Hospital is closed down there will be consequential prejudice and heavy financial loss.

4. The Respondent has opposed the application by grounds of opposition dated 18<sup>th</sup> September 2013. Those grounds include -

(i) That there is no proper appeal before the court.

(ii) That the Appellants have not satisfied the condition for grant of stay of execution.

(ii) That the application is premature.

5. Pending hearing of the application the Appellants have sought interim stay of execution. This ruling concerns that interim relief only.

6. I have considered the submissions of the learned counsels appearing. I have also read the entire judgment of the Board. I note that the orders made and directions given by the Board are by and large meant primarily to protect members of the public who might seek medical services at Victory Hospital, Nairobi or who might come under treatment by the 1<sup>st</sup> Appellant. It is my considered view at this stage that it would not be in the interests of justice to grant any interim relief before hearing and determination of the application, and I decline to do so. Costs will be in the application.

**DATED AND SIGNED AT NAIROBI THIS 25<sup>TH</sup> DAY OF SEPTEMBER 2013**

**H. P. G. WAWERU**

**JUDGE**

**DELIVERED AT NAIROBI THIS 27<sup>TH</sup> DAY OF SEPTEMBER 2013**