



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**JUDICIAL REVIEW DIVISION**  
**MISC. APPLICATION NO. 135 OF 2011**

**IN THE MATTER OF AN APPLICATION BY DR. EDWARD KARANI KARUGA FOR LEAVE  
TO APPLY FOR ORDERS OF MANDAMUS**

**AND**

**IN THE MATTER OF KENYA MEDICAL PRACTITIONERS AND DENTISTS BOARD**

**BETWEEN**

**REPUBLIC .....APPLICA  
NT**

**KENYA MEDICAL PRACTITIONERS & DENTISTS  
BOARD .....RESPONDENT**

**EX-PARTE  
EDWARD KARANI KARUGA**

**JUDGEMENT**

By way of notice of motion dated 8<sup>th</sup> June, 2011 Edward Karani Karuga (the ex-parte applicant) prays for an order of mandamus to issue directing the Kenya Medical Practitioners & Dentists Board (the respondent) to :-

- 1. Issue the applicant with an application form for purposes of registration,**
- 2. Receive the applicant’s documents namely curriculum vitae, degree certificate, certificate of good conduct and evidence that he has duly completed the mandatory internship training.**
- 3. Receive from the applicant the requisite application and registration fee.**
- 4. Convene a meeting of the committee of assessment and registration to consider the applicant’s documents.**

The application is supported by the following grounds on its face:-

- 1. THAT the applicant is a fully qualified medical practitioner and is entitled to recognition and**

registration by the Kenya Medical Practitioners and Dentist Board.

2. **THE applicant is a fully qualified medical practitioner and is entitled to have his documents considered by the respondent for recognition and registration.**
3. **THAT the respondents have denied the applicant requisite and lawful recognition and registration as a medical practitioner in the Republic of Kenya**
4. **THAT the respondents have declined and/or neglected to recognize and register the applicant as a medical practitioner in the Republic of Kenya.**
5. **THAT the actions and/or omissions of the respondent are unreasonable and unlawful.**
6. **THAT the effect of the conduct of the respondents is to deny the applicant the requisite requirement for gainful employment in the Republic of Kenya**
7. **THAT aforesaid conduct of the respondents offends the legitimate and lawful expectations of the Applicant.**
8. **THAT the licence which the Respondent continues to deny the applicant is a source of livelihood of the applicant and his family and the applicant shall continue to suffer irredeemable injury if the respondent is allowed to proceed with her illegal actions.**
9. **THAT the applicant stands to continue suffering prejudice if the orders sought herein are not granted and FURTHER that the respondent stands to suffer no loss and/or no injury and/or no prejudice if the orders sought herein are granted to the applicant.**

The application is also supported by a statement dated 27<sup>th</sup> May, 2011 and a verifying affidavit sworn on 27<sup>th</sup> May, 2011 by the applicant together with annexures thereto.

The application is opposed through a replying affidavit sworn on 2<sup>nd</sup> August, 2011 by Daniel Munyao Yumbya the Chief Executive Officer of the respondent. The respondent also opposed the application through grounds of opposition dated 2<sup>nd</sup> February, 2012. The grounds of opposition are:-

1. **THAT the prayers therein and the entire motion is res Judicata.**
2. **THAT the prayers sought are an attempt to have a second bite at prosecuting the same suit, as the actions sought by the applicant, are merely steps in a decision making process, which decision had already categorically been made.**
3. **THAT in any event, the orders sought are incapable of issuing given that they are not mandatory statutory functions of the respondent.**
4. **THAT the applicant is not a fully qualified Medical Practitioner as alleged.**
5. **THAT the denial of registration to the applicant is premised on his own failure to adhere to internship as required as negotiated between the parties.**
6. **THAT the rights of the Applicant do not and cannot override the rights of general public to sound medical care by qualified and certified medical practitioners.**
7. **THAT the Respondent is duty bound to ensure the highest standards of medical care are availed to the general public and failing to do so is a prejudice for greater than the personal prejudice alluded to by the Applicant.**

**8. THAT the Hon. Court already ruled and found that the Respondent had acted and exercised their statutory power, and cannot be compelled to exercise it in a particular way by the applicant.**

Looking at the papers filed in court, it is clear that the first issue to be addressed in this matter is whether the applicant's notice of motion is res judicata. If it is found that the matter is not res judicata, the next issue would then be whether the remedies sought by the applicant can be issued.

Counsel for the respondent in his submissions told the court that what the applicant seeks in this case is the same thing he sought in **REPUBLIC V KENYA MEDICAL PRACTITIONERS AND DENTISTS BOARD EX-PARTE EDWARD KARANI KARUGA Nairobi H.C. J.R. Misc. 301 of 2010**. He argued that this court should dismiss the applicant's case for being res judicata. The applicant's counsel however submitted that what the applicant was asking for in case No. 301 of 2010 is different from what the applicant is asking for in this case. He told the court that in case No. 301 of 2010 the applicant was asking for recognition but in the case before me the applicant is asking that the respondent be compelled to receive his application for registration and make a decision on the same.

I have perused case No. 301 of 2010 and I find the main prayer in the notice of motion dated 13<sup>th</sup> October, 2010 couched in the following words:-

**“THAT an ORDER OF MANDAMUS directing the Respondent to recognize and register the applicant as a medical practitioner in the Republic of Kenya do issue.”**

Looking at the prayer in case No. 301/2010 and the prayer in this application it becomes clear that the applicant is asking for one and the same thing in the two cases namely registration as a medical practitioner. That alone however is not enough reason for me to declare the applicant's application res judicata. The issue that needs to be decided at this stage is whether the applicant has placed before the court different material from what he placed before the court in case No. 301 of 2010.

In the statutory statement dated 27<sup>th</sup> May, 2011 filed in this case the applicant lists the reasons for seeking relief as follows:-

- 1. The applicant is a full qualified medical practitioner and is entitled to registration and recognition by the Kenya Medical Practitioners and Dentist Board.**
- 2. That the respondent's Committee of assessment and registration has not been convened to receive and consider the applicant's documents.**

The grounds for seeking relief in case No. 301/2010 as stated in the statutory statement filed on 23<sup>rd</sup> September, 2010 are as follows:-

- 1. The decision of the various committees of the Kenya Medical Practitioners and Dentists Board is/are unconstitutional further is/are and made ultra vires to CAP 253.**
- 2. The decision of the various committees of the Kenya Medical Practitioners and Dentists Board is/are irregular, unjustified, unwarranted, baseless and punitive.**
- 3. The applicant is a fully qualified medical practitioner and is entitled to recognition by the Kenya Medical Practitioners and Dentists Board.**

One can clearly see that the grounds for seeking relief are similar in the two applications. The applicant has not placed any material before the court to show that the status that prevailed when he made the application in case No. 301 of 2010 has changed. He has for example not demonstrated that he has successfully completed internship as directed by the respondent. As matters stand, the applicant's application is res judicata.

I could be wrong on the issue of res judicata and I find it beneficial to the parties herein to go ahead and

make a decision on the evidence placed before the court. The applicant prays that the respondent be directed to receive his application for registration as a medical practitioner. He says he is a qualified medical practitioner and he is entitled to recognition by the respondent. The respondent's case is that for one to be recognized or registered as a medical practitioner he has to fulfill the requirements of Section 11 of the Medical Practitioners and Dentist Act, Chapter 253. The respondent submits that successful internship is one of the requirements for registration. The respondent says the applicant has refused, neglected or failed to undergo internship. The applicant does not dispute this fact. This court cannot direct the respondent to receive the applicant's papers knowing well that the applicant has not complied with the requirements of the law. The only way the applicant can have the door to the medical world opened to him is by following the rules for registration that have been put in place. The applicant can knock the judicial review door as many times as he desires but the answer will always remain the same. The much I can do is to remind the applicant what this court (Gacheche, J) said at page 9 of its judgement in case No. 301 of 2010. He was told that:-

**“The fact that the Board has given Karani ‘all the necessary opportunities’, which he has failed to take advantage of is not disputed, and in my humble opinion, the fact that the decision by the Board was not what he would have expected, would not render it the subject of an application for an order of mandamus, for a court cannot compel a respondent such as this Board to determine a matter in a particular way. Once it is established that a respondent has failed to perform its duty, all that a court can do is to compel a respondent to perform its duty, which would not apply here for the Board fulfilled its mandate and arrived at its decision, unpalatable as it might be, it should however be honoured. Needless to say, this court deals with the process not the merits of the decision; the Board appears to have done all that it reasonably could to fulfil its duty.”**

The applicant for reasons best known to him has refused to undergo internship. He has formed an impression that this court can help him to bypass the requirement for internship. He is however reminded that this is a court of law and its fidelity to the laws of this country is un-debatable. The court cannot aid a party in a case to break the law.

Considering the evidence placed before this court, it is clear that this matter is res judicata. Even if I had found that the matter is not res judicata, I would still have found that the applicant is not deserving of the orders he seeks. The respondent has already fulfilled its duty by asking the applicant to undergo internship and asking the respondent to receive the applicant's application for registration forms, will be an exercise in futility. I think there is nothing more to add except to state that the applicant's application fails and the same is dismissed. The applicant will meet the respondent's costs.

Dated and signed at Nairobi this 28th day of February, 2012.

**W. K KORIR**  
**JUDGE**