



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Case 275 of 2004**

**AGA KHAN HEALTH SERVICE.....APPELLANT**

**VERSUS**

**AINEAH LIKUYANI NJIRAH..... RESPONDENT**

**J U D G M E N T**

On 21/4/2004, the appellant herein moved to this court, by way of an appeal challenging the Ruling delivered against it by the Resident Magistrate's Court, Nairobi, dated 8/4/04 on the following six grounds:

1. That the Learned Magistrate erred in both fact and law in ruling that the Plaintiff disclosed a triable cause of action while in fact there was none.
2. The Learned Magistrate erred in both fact and law in ruling that there was an issue as to whether a contractual relationship existed between the parties when in fact that was not only an issue but also such relationship never existed between the parties hereto.
3. That the Learned Magistrate erred in both fact and law in failing to strike out the Plaintiff when in fact the Respondent has unequivocally admitted particulars supplied on 16/10/2003 that neither him nor his family visited the Appellant's hospital on 13/8/1996.
4. The Learned Magistrate erred in both fact and law in failing to rule on whether the Respondent can in law maintain an action on behalf of his wife and siblings without satisfying the requirements of Order 1 and 31 of the Civil Procedure Rules.
5. That the Learned Magistrate erred in both fact and law in failing to record and appreciate all the arguments advanced by the Learned Counsel for the Appellant in arguing the application the subject of the ruling appealed against.

Wherefore the appellant prays for orders that:

- a. The Ruling and order of the Learned Magistrate given on 8/4/04 be wholly reversed;
- b. The appellants chamber summons dated 22/1/2004 be allowed with costs to the appellant.
- c. Costs of the appeal be borne by the Respondent.

The appeal arises from a Ruling of the lower court dismissing an application by the appellant herein, to have the plaint struck out from the record, as it does not disclose any reasonable cause of action.

The facts, as alleged in the plaint, are briefly, as follows:

The Respondent/Plaintiff – AINEAH LIKUYANI NJIRAH, was an employee of the United Nations, at Nairobi. The employer, the United Nations, Nairobi, ran and operated a medical scheme, with AGA KHAN HOSPITAL, offering both in-patient and outpatient care in various fields of medicine including dental care to members of the public for pay.

On 17/8/96 and 10/8/96 the Plaintiff, the employee of the United Nations at Nairobi, visited the Defendants aforesaid hospital together with members of his family and they did receive medical attention and treatment in the form of dental care and hepatitis injections.

Upon receipt of the services aforesaid the Plaintiff duly paid for them in settlement of invoices issued by the Defendant and thereafter lodged a claim for reimbursement from his employer as he was entitled to do.

Notwithstanding the foregoing the Defendant by its letter dated 27/8/96 misrepresented to the Plaintiff's employer that the Plaintiff and his family did not visit the Defendant's Dental Clinic on 13/8/96 and that the Plaintiff's family anomalously used the same invoices twice to procure the Hepatitis injections.

By reason of the injurious and false misrepresentations contained in the Defendant's letter, the Plaintiff's employer summarily terminated the Plaintiff's employment and the Plaintiff has suffered much loss, damage and injury.

The Plaintiff alleges that the Defendant's letter breached the contractual Doctor-Patient relationship based on trust and confidence, constitutes a serious blight on the Plaintiff's integrity and truthworthiness and has rendered the Plaintiff unemployable.

In its defence, the Defendant averred that the suit is time barred and it should be dismissed but admits writing the letter dated 27/8/96 because as per the Defendant's Dental register, the Plaintiff had not visited the dental clinic on 17/8/96 and the investigations were still going on.

It is on the basis of the foregoing that the Defendant applied for the plaint to be struck out of the Record and the suit dismissed as it discloses no reasonable cause of action; and when the Lower Court rejected the prayers in the said application, that prompted this appeal.

Having carefully perused the pleadings herein, and considered the submissions by Counsel for both sides, I have reached the following findings and conclusions.

First, there are common grounds which the parties are not contesting. These include the fact that if any claim in the plaint is based on tort, then such claim was time barred; that the Appellant did write the letter dated 27/8/96 to the Respondent's employer, the United Nations, Nairobi, and that the Plaintiff was the employee of the United Nations which had a medical scheme with the Defendant.

Having abandoned any claim on tort, the parties disputes can only hinge on contractual relationship, if any. This is, in my view, the only basis of the dispute, and the foundation of the grounds of the appeal herein.

From the pleadings, there is no doubt that the Plaintiff/Respondent was a beneficiary of the medical scheme between the Defendant/Appellant herein and the United Nations, Nairobi. Put differently, the Plaintiff/Respondent was not a party to the medical scheme cover. The parties were the Appellant/Defendant and the United Nations, Nairobi. That said it is trite to observe that if the Plaintiff was not a party to the contract on medical care, his family members are even further from being privy to the medical care agreement entered between the Defendant/Appellant and the United Nations, Nairobi.

Accordingly, neither the Respondent/Plaintiff, nor any of his family members can sustain a claim against the Defendant/appellant based on the said contract.

The crux of the dispute between the parties is whether or not the Respondent visited the Appellant's Hospital on 13/8/96. And the record is quite clear that the Respondent, by his own admission, in paragraphs 4 and 6 of the Plaint, did not visit the Appellants medical facility. From the Plaint, paragraph 4, the Respondent visited the Appellants Hospital on 17/8/96, the basis for the Appellant writing to the Respondent's employer, United Nations, Nairobi, on 27/8/96, as he was duty bound, under the contract, to do.

Taking all the foregoing facts into account, I find and hold that the Respondent's Plaint does not disclose any reasonable cause of action against the Appellant, either in tort or on contract. Accordingly, I find and hold that the Subordinate Court erred in holding that the Plaint discloses a reasonable cause of action.

In the result, this appeal succeeds and the Ruling and order of the Resident Magistrate, given on 8/4/04, is hereby reversed; the appellants Chamber Summons dated 22/1/04 is allowed with costs in favour of the Appellant and against the Respondent.

I further order that the Respondent do pay the costs of this Appeal.

DATED and delivered in Nairobi, this 22<sup>nd</sup> Day of July, 2008.

**O.K. MUTUNGI**

**JUDGE**