



**Republic v County Assembly of Muranga & 2 others; Aberdare
Medical Centre Limited & 3 others (Exparte) (Judicial Review
E009 of 2023) [2025] KEHC 1514 (KLR) (18 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1514 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
JUDICIAL REVIEW E009 OF 2023
J WAKIAGA, J
FEBRUARY 18, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

COUNTY ASSEMBLY OF MURANGA 1ST RESPONDENT

MURANGA COUNTY EXECUTIVE 2ND RESPONDENT

MURANGA COUNTY GOVERNMENT 3RD RESPONDENT

AND

ABERDARE MEDICAL CENTRE LIMITED EXPARTE

MODERN ABERDARE VIEW HOSPITAL EXPARTE

KANGEMA MEDICAL CENTRE EXPARTE

MOUNT KENYA KANGEMA HOSPITAL EXPARTE

JUDGMENT

1. By a Notice of motion dated 15th December 2023 the Ex-parte applicants sought the following orders
 - A. Order of Certiorari be granted to the applicants and be directed at the County Government of Muranga to remove into this court and quash its decision to levy and demand payments and executing its demand by seizing and carrying away the 1st Ex-parte applicant's electrolyte machine and two CPUS holding hospital and NHIF systems, on 26th October 2023 fir single business permit and returning the seized items.



- B. An order of prohibition be granted to the ex-parte applicants directed at the County Government of Muranga prohibiting it from levying, demanding payments and or executing their demand by seizing and carrying away of any equipment belonging to any medical profession in the Muranga County including the Ex-parte applicants and used by them for the purposes of operating the medical facilities in the pretext of enforcing single business permit fee or otherwise.
 - C. Cost be provided for
2. The application was founded on the following grounds;
 - A. That the 1st respondent enacted the Muranga County Finance Act 2018 , which was amended in 2023 in which at section 14 thereof empowered the county to levy single business permit to cover private health facilities with the medium private health Facility with or without accommodation with capacity of 5 to 10 beds paying Kshs 40,000(forty Thousand), small private facility outpatient services with overnight accommodation of up to 5 beds kshs 30,000 and health clinics Doctor surgery ; Doctor ,Dentist , Physiotherapist , Psychologist, laboratory servicers, consultant office and others with no overnight accommodation Kenya shillings twenty thousand (kshs 20,000)
 - B. That on the 26th October 2023 the respondent’s revenue officers visited their premises demanding payment for business permits and unlawfully carted away the electrolyte machines without a formal demand for the fee and the reason therefore.
 - C. That for fear of harassment by the respondents’ enforcement officers, the applicants have been forced to pay for the single business permit for several years notwithstanding the fact that they are regulated by the licencing bodies, to which they pay annual fee for practices namely the Kenya Medical Practitioners and Dentist Board four doctors and dentists, the Clinical officers Council for clinical officers and the Nursing Council for nurses respectively.
 - D. That the applicants pay between Kenya shillings fifteen thousand (kshs15,000) and eighty thousand (kshs 80,000) annually as licence fee to operate and therefore the demand by the respondents had exposed them to double taxation and without giving them an opportunity to defend themselves contrary to Article 47 of *the constitution* and without an opportunity to defend themselves.
 - E. It was contended that the continued enforcement of the decision was prejudicial to the applicants and would subject the same to double taxation which is unconstitutional, unlawful, unjustifiable and ultra vires.
 3. The application was supported by the affidavit sworn by Samuel Gitonga Njiru in which he deposed that medical clinics are fully licenced to operate as such by the medical practitioners and dentist board to which they pay the annual fee to practice yet the applicants have been subject to and or forced to pay for single business permit for several years to avoid harassment by the respondents’ officers while the same has no mandate over professionals in the medical field .
 4. In response to the application the respondents filed a replying affidavit in which it was deposed that Article 209 of *the Constitution* authorizes the respondents to enact the Financial Act complained of and that the applicant’s business falls under the schedule of the said Act which was passed after public participation.
 5. It was contended that the action complained of was carried out on account of non-payment of the levy and that the rights of the applicants had not been violated and that the single business permit



was imposed upon the Applicants as they were also engaged in the business of selling pharmaceutical products which is not charged on the applicants as professionals.

Submissions

6. On behalf of the applicants, it was submitted that the applicants are regulated by a licencing body and pay annual fee for practice and therefore the respondents did not have the mandate over the same and could not regulate professionals such as doctors, Clinical officers and nurses who were regulated by the Medical Practitioners and Dentist Act Cap 253. It was contended that any law made by the County Government was inferior to the provisions of National legislation and in this cause, the *Pharmacy and Poisons Act*, Food, Drug and Chemical Substances Act and Medical practitioners and Dentist Act.
7. It was submitted that the action of the respondents of imposing taxes without involving the Applicants contravened the provision of Article 47(1) of *the Constitution* which requires fair administration action by all public institutions and that as per the provision of Article 191(2) of *the constitution* any county legislation which is in conflict with the National government legislation must give way to the later and that the respondent cannot levy taxes against the applicant as was stated in the case of Peter Ndungu mbugua & 39 others v County Assembly of Nyandarua & 2 others [2018] eKLR and Medina Hospital limited & 5 others v County Government of Garissa [2015] e KLR .
8. It was contended that the devolved units are prohibited from levying for services provided by medical professionals as was stated in the case of Mama Nursing Home & others v County Government of Migori .
9. The applicants submitted that they were not given an opportunity to defend themselves as to why they should not pay for single business permit fee and therefore the respondents actions of taking away the applicants electrolyte machine was unjust , unfair and unreasonable as was stated in the case of John Njenga Ngethe & 117 others Nakuru HCC JR No 14 of 2014 where the court stated that the decision to void in so far as it allows for the licensing of the Medical Practitioners and was made ultra vires the powers of the county .
10. It was contended that the act of levying for single business permit by the county government after the applicant had paid licencing fee to other bodies amounted to double taxation and therefore the applicants were entitled to the orders sought.
11. On behalf of the respondents it was contended that Article 209 (3(c) of *the constitution* allows the County Government to impose taxes and levy and that section 14 of the Muranga County Finance Act 2018 allowed it to issue licences to the Applicants' under Schedule 10 of the Act and that the applicants had failed to pay the requisite licence fee as stipulated in the Act thereby necessitating the respondents to enforce the payment of the licence fees through impounding their tools of trade as an enforcement mechanism to ensure compliance .
12. It was contended that the Finance Act was constitutional and all its provisions ought to be adhered to.
13. It was contended that the applicants were involved in trade of pharmaceutical products which amounted to trade and that the payment of the trade licence and professional fee did not amount to double taxation as was stated in Kenya Pharmaceutical Association & Another v Nairobi City County and 46 others [2017] eKLR where the court held that to the extent that pharmacy is also involved in selling products , by being asked to pay trade licence for their business , cannot be said to be regulating or controlling the professional .
14. It was submitted that judicial review was more concerned with the manner in which the decision was made than the merit thereof and that the burden was upon the applicant to establish that the decision



was tainted with illegality as was state in Republic v AG & 4 others ex-parte Diamond Hashim Lalji & another

Determination

15. This matter raises the question of the role of the County Government in licencing professional bodies which is the war the professional bodies had with the defunct Local Authorities for which there are many decided case from the superior courts
16. The only issue for determination in this cause is whether the applicants are professional bodies which are licenced by their association.
17. From the pleadings and in particular the statutory statement the applicants describe themselves as private medical clinics licence by the Kenya Medical Practitioners and Dentist Board. The question for this court to answer is whether the medical clinics are exempted from applying for single business licence issued by the county government.
18. This issue has been litigated upon by this court and the general principles from the litigations and court determinations are the professionals are not subjected to licencing by the county government based upon the reading of Article 260 of *the constitution* and the fourth schedule of *the constitution* which provides for the distribution of functions between the national and the county government at section 7 of part 2 thereof which provides the powers and functions of the county as ; trade development and regulation , including :
 - A. Market
 - B. Trade licence (excluding regulation of professionals)
 - C. Fair trading practices
 - D. Local tourism and
 - E. Cooperatives.
19. The petitioners according to their pleadings are medical centres, clinics and hospital where medical professionals carry out their trade and cannot be said to be professionals under the definition provided for in paragraph 7(b) of the fourth schedule to be a professional body due to the educational qualification and follows the prescribed moral and professional code of conduct. This was the position taken by the court in the case of Okenyo Omwansa George and another v The Attorney General & 2 others where the court stated that a profession presupposes a course of academic, professional and ethical standards through working for senior colleagues.
20. It is clear that the petitioners do not fit the definition herein above and therefore cannot enjoy the exception provided for under *the constitution* as was stated by the court in the case of Kenya Pharmaceutical Association & another v Nairobi City County Government [2017] eKLR where the court stated that by being asked to pay trade licences for their premises , the country government cannot in any manner be said to be regulating or controlling the profession .
21. The petitioner's contention that being asked to pay for a single business amount to double taxation was answered by the court in Gideon Ndambuki Munyao & others v County Government of Machakos & another [2020] KEHC 6266 where the court held that the finance Act which authorized the imposition of the levies had not been declared unconstitutional and therefore entitled the respondent to levy the trade licence against the petitioners. It is the finding of the court that the petitioners failed to prove their claim of double taxation.



22. I have looked at the authorities submitted by the petitioners in support of the petition herein however it must be pointed out that the same are distinguishable in that they are in respect of levying of licencing fee in respect of medical professionals as opposed to medical institutions as in the case of the petitioners herein. It therefore follows that the petitioners have failed to prove that they are professionals within the meaning of *the Constitution* and find and hold that they are not entitled to the remedies sought herein.
23. Whereas the scope of judicial review has now been enlarged to enable the court look at the merit of the decision complained of , in this cause the applicants did not demonstrate that the decision of the respondent to impose taxes and licences was unreasonable ,illegal or ultra vires and that the respondent did not have the colour of right to demand for the payment of single business licence from the applicants and that they were not accorded the necessary hearing before the actions complained herein were executed .
24. The application herein is hereby dismissed.
25. On the issue of cost, since the petition was for enforcement of an alleged violation of human rights and freedoms, each party shall bear their own cost and it is hereby ordered.

SIGNED DATED AND DELIVERED VIRTUALLY THIS 18th DAY OF FEBRUARY 2025

J. WAKIAGA

JUDGE

In the presence of

Ms. Ngari for the applicant

Mr. Mwaura for the respondent

