



Aga Khan University Hospital v Disciplinary & Ethics Committee of the Kenya Medical Practitioners and Dentists Council & another (Civil Appeal E1350 of 2024) [2025] KEHC 10266 (KLR) (Civ) (17 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10266 (KLR)

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

CIVIL

CIVIL APPEAL E1350 OF 2024

LP KASSAN, J

JULY 17, 2025

BETWEEN

AGA KHAN UNIVERSITY HOSPITAL APPLICANT

AND

**DISCIPLINARY & ETHICS COMMITTEE OF THE KENYA MEDICAL
PRACTITIONERS AND DENTISTS COUNCIL 1ST RESPONDENT**

**PROF. KIAMA WANGAI & CO. ADVOCATES ON BEHALF OF SVEVA
GALLMANN FOR MARIA EMMA KUKI GALLMANN 2ND RESPONDENT**

RULING

1. This is an application brought by the Appellant, Aga Khan University Hospital, arising from Disciplinary Cause No. 53 of 2021, challenging a decision of the Disciplinary and Ethics Committee of the Kenya Medical Practitioners and Dentists Council delivered on 9th November 2023. The Appellant seeks orders compelling the 1st Respondent to provide a complete, accurate, and verifiable record of the disciplinary proceedings, including audio recordings, handwritten notes, and all other supporting material.
2. The Appellant argues that the proceedings as provided by the 1st Respondent are incomplete, inaccurate, and in parts illegible. It contends that material portions of the October 2022 hearing, including records of appearances, cross-examinations, and witness statements, are either omitted or missing altogether. The Appellant asserts that a complete and verifiable record is essential to secure the right to a fair hearing under Article 50 of *the Constitution*. Without such a record, the Appellant argues, this court cannot justly determine the pending appeal.



3. In reply, the Respondent maintains that it provided a certified record of the proceedings, which it believes is accurate and complete. The 1st Respondent submits that handwritten notes and audio-visual recordings do not form part of the official record in accordance with the relevant disciplinary rules, as the narrative form captures the evidence, cross-examinations, and submissions comprehensively. The 1st Respondent further asserts that the Appellant's application is without merit and amounts to an abuse of the court process intended merely to delay the determination of the appeal.
4. I have carefully considered the rival submissions and the documents annexed to the application. The core issue for determination is whether the Appellant has demonstrated sufficient grounds to compel the 1st Respondent to furnish additional material beyond the certified narrative record already supplied.
5. It is a settled principle that an appellate court is best served by a complete and accurate record of proceedings to enable it to conduct a meaningful and fair review of the decision appealed against. Where a party raises a credible challenge to the accuracy or completeness of the record, the court is entitled to investigate whether the record provided meets the threshold of adequacy.
6. In the instant case, the Appellant has raised detailed concerns regarding missing appearances, cross-examinations, and other aspects of the October 2022 hearing, which, if true, would potentially compromise its right to a fair appeal. The 1st Respondent, on its part, has not produced any clear evidence showing that the narrative record sufficiently captures these contested portions, nor has it convincingly addressed why, in modern practice, supplementary audio or handwritten notes could not be availed to resolve any apparent inconsistencies.
7. On the issue of audio proceedings, I wish to make the following observations. The integrity of proceedings is critical in making a constitutional decision and in ensuring that the ends of justice are met. Written proceedings must align with any audio record so as to reflect the actual happenings in a session. Historically, since the Tribunal was established, the High Court has primarily relied on written proceedings. The recent introduction of audio recording has therefore raised legal questions as to which record should ultimately prevail, though there is an assumption that the two modes of recording should be identical.
8. The question then arises: at what point can the Court disregard written proceedings and demand audio proceedings? Secondly, what is the place of handwritten or narrative proceedings in the modern era of technology?
9. The Tribunal, as a constitutional creature, is clothed with all the laws that give it legitimacy. Its critical mandate includes recording accurate proceedings. It is true that the mode of recording is in narrative form rather than verbatim, a practice mirrored in courts, Parliament, and other similar bodies. The danger of attempting to record each and every word, including off-the-cuff remarks, punctuated by laughter, sighs, or coughs, would burden the process unnecessarily and hamper the efficiency of the tribunal. *The Constitution* vests trust in the Tribunal's capacity to faithfully and competently narrate proceedings. If these written proceedings are to be considered inaccurate, then there must be clear proof before a court can substitute them with a verbatim (audio) record. Otherwise, to order a word-for-word audio proceeding would amount to finding the tribunal incompetent in recording evidence, a conclusion which cannot be lightly made without cogent evidence, which in this case I do not find.
10. The danger of normalizing requests for audio proceedings cannot be overemphasized. It would inevitably cause delays in determining appeals. Given the backlog of appeals before courts like Milimani, parties may be tempted to raise flimsy reasons to frustrate and delay expeditious hearings. It is high time that courts trust institutions bestowed with statutory and constitutional authority, unless there is a concrete reason to depart from this trust.



11. Moreover, audio recordings themselves face challenges including internet interruptions or potential cybercrime interference. In contrast, handwritten proceedings are far less susceptible to such manipulation. In view of all the above, I find no sufficient reason to warrant an order for the 1st Respondent to produce audio proceedings.
12. However, to balance the interests of fairness, I direct that the handwritten proceedings be availed to the Appellant to aid the fair determination of its appeal. In view of these circumstances, and in the interest of fairness and procedural justice, I am persuaded that the Appellant should be entitled to have the benefit of the most complete record possible. I therefore find it reasonable to direct the 1st Respondent to produce, within 30 days, all supplementary materials in its custody, handwritten notes relating to the hearing of 14th October 2022, for purposes of verifying the narrative record already certified.
13. There shall be no order as to costs at this stage.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 17TH DAY OF JULY 2025

LINUS P. KASSAN

JUDGE

In the presence of:-

Muchui for Applicant

Thige for Respondent

Carol – Court Assistant

