



Mary Help of the Sick Mission Hospital v Kamau (Suing as the Administrator of the Estate of Josephine Wanjiru Irungu); Karanja & 2 others (Interested Parties) (Civil Appeal E989 of 2023) [2024] KEHC 16992 (KLR) (Civ) (17 October 2024) (Judgment)

Neutral citation: [2024] KEHC 16992 (KLR)

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

CIVIL

CIVIL APPEAL E989 OF 2023

AB MWAMUYE, J

OCTOBER 17, 2024

BETWEEN

MARY HELP OF THE SICK MISSION HOSPITAL APPELLANT

AND

**PETER THUKU KAMAU RESPONDENT
SUING AS THE ADMINISTRATOR OF THE ESTATE OF JOSEPHINE
WANJIRU IRUNGU**

AND

**DR GEORGE K KARANJA INTERESTED PARTY
DR LAMBERT NIYONIZINGIYE INTERESTED PARTY
THE KENYA MEDICAL PRACTITIONERS AND DENTISTS
COUNCIL INTERESTED PARTY**

(Being an Appeal against the Ruling and Orders of the Kenya Medical Practitioners and Dentists Council, Disciplinary and Ethics Committee delivered on 25th February, 2022 in PIC No. 29 of 2019)

JUDGMENT

1. This appeal emanates from the Ruling on an inquiry by the Disciplinary & Ethics Committee of the Kenya Medical Practitioners & Dentists Council in PIC No. 29 of 2019 delivered on 22nd February, 2022.



2. The Appellant herein Peter Thuku Kamau lodged a complaint before the 3rd Interested Party pursuant to Section 3 of the Medical Practitioners & Dentists Act, Cap 253 Laws of Kenya, on behalf of his late spouse Josephine Wanjiru Irungu (hereinafter ‘the deceased’) against Mary Help of the Sick Mission Hospital (hereinafter the ‘Appellant’) and Dr George K. Karanja (hereinafter ‘the 1st Interested Party’).
3. The Appellant, dissatisfied with the ruling of the 3rd Interested Party, filed the Memorandum of Appeal dated 29th February, 2024 which elucidates four grounds of appeal, namely:
 - i. That the Disciplinary and Ethics Committee of the Kenya Medical Practitioners and Dentists Council erred in law and fact in making a finding that the Respondent had the locus standi to lodge a complaint on behalf of the estate of the late Josephine Wanjiru Irungu.
 - ii. That the Disciplinary and Ethics Committee of the Kenya Medical Practitioners and Dentists Council erred in law and fact in making a finding against a doctor whom a complaint had not been lodged.
 - iii. That the Disciplinary and Ethics Committee of the Kenya Medical Practitioners and Dentists Council erred in law and fact in finding the Appellant is vicariously liable, having already dismissed the complaint lodged against its doctor.
 - iv. That the Disciplinary and Ethics Committee of the Kenya Medical Practitioners and Dentists Council erred in law and fact by failing to take into consideration all the evidence on record adduced by all the witness called upon by the Appellant
4. Parties filed their submissions. The Appellant filed its Written Submissions dated 11th June, 2024; while the Respondent and 3rd Interested Party filed their Written Submissions dated 10th June, 2024 and 28th June, 2024 respectively.
5. On the first ground of appeal, the Appellant contends that the Respondent had no locus standi to represent the estate of the deceased. The Appellant’s Written Submissions argue that while the letters of administration were acquired on November, 2019, the complaint was lodged on 16th May, 2019. The Respondent’s and 3rd Interested Party’s position is that a complaint lodged at the disciplinary ad ethics committee is not only for the benefit of the complainant, but to ensure highest standards of medical care.
6. *The Constitution* under Article 159 states that justice shall be administered without undue regard to technicalities. This ground is based on a technicality that the complaint was lodged by the Respondent before acquiring letters of administration. I also find no fault in the 3rd Interested Party’s ruling that investigations at the council are not only for the benefit of the person who has lodged a complaint but for any other person seeking medical services from any profession or institution. This ground of appeal therefore fails.
7. On the second ground, the Appellant argues that no complaint was lodged against Dr.Lambert Niyomizingiye yet the 3rd Respondent found him to have negligently managed the deceased. The Appellant relied on the case of *Ndishu & Another v Muriungi (Civil Appeal 3 of 2020)* 2022 eKLR to buttress its position. The Respondent and 3rd Interested party contend that the 3rd Interested Party acted within its mandate to regulate the profession and ensuring fitness to practice and operate, by finding that Dr. Lambert Niyomizingiye had negligently managed the deceased.
8. The Disciplinary Committee investigated into the treatment and management of the patient by Dr. Lambert Niyomizingiye. The committee found that the Doctor’s poor evaluation of the deceased



led to the failure to notice that the patient was about to go into shock. Consequently, Dr. Lambert Niyomizingiye failed to engage the services of the consultant Obstetrician/Gynaecologist.

9. The mandate of the Kenya Medical Practitioners and Dentists Council, Disciplinary and Ethics Committee is provided for under section 4A(1)(b) of the *Medical Practitioners and Dentists Act*, it provides;

- “(b) disciplinary and ethics committee whose mandate shall include—
- (i) conducting inquiries into complaints submitted to it;
 - (ii) regulating professional conduct;
 - (iii) ensuring fitness to practice and operate;
 - (iv) promoting mediation and arbitration between parties; and
 - (v) at its own liberty, recording and adopting mediation agreements or compromise between parties, on the terms agreed.”

10. The Act is clear on the mandate of the disciplinary and ethics committee. It is this Court’s finding that the committee acted within its power by finding Dr. Lambert Niyomizingiye , a medical practitioner, negligent.

11. The third ground is intertwined with the second ground. Having found that Dr. Lambert Niyomizingiye negligently handled the deceased, the Appellant being his employer, is vicariously liable.

12. I find no reason to interfere with the decision of the disciplinary and ethics committee dated February 25, 2022. Accordingly, the appeal is dismissed. Costs of the appeal are awarded to the Respondent and the 3rd Interested party as against the Appellant.

DATED, SIGNED, AND DELIVERED VIRTUALLY THIS 17TH DAY OF OCTOBER, 2024.

BAHATI MWAMUYE

JUDGE

