



REPUBLIC OF KENYA



KENYA LAW

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**Wambu (Suing as the administrator & personal representatives of the
Estate of Ruth Gathoni Wambu (Deceased) v Wambu & 2 others (Civil Case
232 of 2010) [2023] KEHC 2339 (KLR) (Civ) (22 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2339 (KLR)

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

CIVIL

CIVIL CASE 232 OF 2010

AN ONGERI, J

MARCH 22, 2023

BETWEEN

**WALTER NDINDI WAMBU (SUING AS THE ADMINISTRATOR &
PERSONAL REPRESENTATIVES OF THE ESTATE OF RUTH GATHONI
WAMBU (DECEASED) PLAINTIFF**

AND

DR JR WAMBU 1ST DEFENDANT

DR LUCY MUCHIRI 2ND DEFENDANT

THE MATER HOSPITAL 3RD DEFENDANT

RULING

1. This ruling was triggered by an objection raised by the learned counsels for the Defendants to the production of a report by PW 2, Professor Kiama Wangai on the basis that at the time Professor Kiama Wangai authored the report dated October 13, 2009, he was not registered by the Medical Practitioners and Dentists Board of Kenya.
2. The learned counsel for the 2nd and 3rd Defendants referred to a letter dated 4/8/2009 confirming that Professor Wangai had not applied for specialist registration and therefore he was not recognized as a specialist pathologist.
3. The learned counsel referred to section 22 of the *Medical Practitioners and Dentists Act* cap 253 Laws of Kenya as read with the *Medical Practitioners and Dentists (Private Practice) Rules* where a pathologist is defined as a specialist in one or all disciplines in clinical laboratory medicine.



4. He said section 12 of [cap 253](#) requires that a specialist has to be issued with a specialist licence over and above the certificate of incorporation.
5. He said section 18 of [cap 253](#) says that no certificate or other document required by law to be signed by a duly qualified medical or dental practitioner shall be valid unless signed by a person registered as a medical or dental practitioner under the [Act](#).
6. Opposing the objection, the learned counsel for the Plaintiff said when the documents were served upon the defence counsels, they did not object to the same and the matter was listed for hearing.
7. She also said it is unfair for the defence counsels to raise the objection at this stage. She said Professor Kiama Wangai is qualified as a medical doctor and specialist pathologist and his registration number is A4229 of 1996.
8. The learned counsel for the plaintiff referred to section 48 of the [Evidence Act](#) and said Professor Kiama Wangai is an expert in pathology and therefore the report is admissible in evidence.
9. I have considered the rival submissions raised by the learned counsels for both parties in this objection.
10. I find that it is not in dispute that Professor Wangai holds a Bachelor of Medicine and Surgery degree and a master's degree in medicine in human pathology from university of Nairobi.
11. It has not been disputed that Professor Wangai is a fellow faculty of forensic and legal medicine (UK) and a fellow of college of pathologists in East Africa.
12. The learned counsels for the Defendants did not dispute that Professor Wangai is a consultant pathologist registered as such in the Republic of Kenya as well as a specialist in forensic medicine registered by the Medical Council of Kenya as he said under oath.
13. PW 2(Professor Wangai), also said he is a professor in medical law and forensic medicine currently teaching at Egerton University. He said he also holds an LLB degree and Masters in Law from university of South Africa and he is also an advocate of the High Court of Kenya.
14. I have perused the provisions of the Medical Practitioners and Dentist's Act referred to by the counsels for the Defendants.
15. Section 12(1) and 18 state as follows:
 12. Specialist licences
 - (1) The Council shall issue in accordance with this section and rules made under this Act, general, specialist and any other practising licences as the Council shall determine from time to time authorizing medical practitioners and dentists named therein to practice medicine or dentistry.
 18. Certificate not valid unless signatory registered, etc

No certificate or other document required by law to be signed by a duly qualified medical or dental practitioner shall be valid unless signed by a person registered as a medical or dental practitioner under this Act or, where the context so admits, by a person who is licensed by the Board under section 13.
16. The learned counsel for the plaintiff referred to section 48 of the [Evidence Act](#) which also states as follows:

Opinions of experts.



- (1) When the court has to form an opinion upon a point of foreign law, or of science or art, or as to identity or genuineness of handwriting or finger or other impressions, opinions upon that point are admissible if made by persons specially skilled in such foreign law, science or art, or in questions as to identity, or genuineness of handwriting or fingerprint or other impressions.
 - (2) Such persons are called experts.
17. The sole issue for determination in this objection is whether Professor Wangai's report dated October 13, 2009 is admissible in evidence in the light of the allegations that it was authored by him when he was not registered by the Medical Practitioners and Dentists Board of Kenya.
 18. I find that the Defendants' counsels are relying on a letter dated 4/8/2009 to bar Professor Kiama from producing his report dated October 13, 2009.
 19. With tremendous respect to the learned counsels for the Defendants, I find that the author of the said letter has not testified in this case and the veracity of the contents of the said letter has not been tested in cross examination.
 20. Professor Wangai outlined his qualifications to the court and I find that the learned counsels for the Defendants did not dispute the same.
 21. The Professor (PW2) has not been given an opportunity to demonstrate when he attained his qualifications as a specialist pathologist and no prejudice will be suffered by the Defendants who will be accorded an opportunity to cross examine him in order to establish when and how he attained his qualifications as a specialist pathologist.
 22. The learned Counsel for the Plaintiff said the registration number of Professor Wangai is A4229 of 1996. The Professor also said he has 26 years' experience after qualification.
 23. The qualifications Professor Wangai detailed to this court have not been challenged by the counsels for the Defendants.
 24. I find the issue of when he was registered is one that requires ventilation in evidence and the same cannot be ousted by a letter whose veracity is yet to be tested.
 25. Article 159(2) (b) and (d) of Constitution requires courts to administer justice without undue regard to procedural technicalities and without delay.
 26. The duty of the courts to administer justice without undue regard to procedural technicalities also applies when interpreting substantive provisions of the law.
 27. I find that it is not in dispute that Professor Wangai is specially skilled not only in medicine as he said but also in law and the mere fact that a letter has been filed stating that at the time he authored the report dated 13/10/2009 he was not registered by the Medical Practitioner's and Dentist Board does not negate his qualifications.
 28. The Supreme Court said in the case of *Raila Odinga v IEBC & others* [2013] eKLR as follows: -

“Article 159 (2) (d) of the Constitution simply means that a court should not pay undue attention to procedural requirements at the expense of substantive justice”
 29. I find that Professor Wangai is qualified as an expert in pathology and he is therefore qualified to testify as an expert and the issue as to when he received registration and licencing by the Medical Council of Kenya is one yet to be ventilated during the hearing of this case.



30. I find that the requirements for licencing and registration do not confer any expertise upon anyone and section 48 of the Evidence Act states that an expert is one specially skilled in his area of expertise and further that opinions by experts are admissible if made by persons specially skilled.
31. It is also on record that the Defendants had raised earlier objections against the professor and therefore they had the opportunity to object to the production of the report which was served upon them at the inception of this suit.
32. The parties must also have complied with order 11 of the Civil Procedure Rules as well as raised the issues for determination before this suit was listed for hearing and they had yet another opportunity to raise their objection to the said report or to coin the said issue for determination by the court.
33. This Court took over this case when it was partly heard but upon perusing the proceedings, I find that there has been undue delay in disposal of this suit.
34. I find that the piece mill applications by the Defendants have only served the purpose of delaying this suit and the same contravene article 159(2) (b) of the Constitution which prohibits the delay of suits.
35. In a nutshell, I find that it is not in the interest of justice to prevent a witness from giving evidence in this case on the basis of unproved allegations in the form of a letter dated 4/8/2009.
36. I accordingly overrule the objection and allow Professor Wangai to produce the report dated October 13, 2009 and to be cross examined on the issue of his qualifications and expertise.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 22ND DAY OF MARCH, 2023.

.....

A ONGERI

JUDGE

In the presence of:

..... **for the Plaintiff**

..... **for the 1st Defendant**

..... **for the 2nd Defendant**

..... **for the 3rd Defendant**

