



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CIVIL APPEAL NO. E093 OF 2021

MICHAEL OUMA ODEROAPPELLANT/APPLICANT

VERSUS

DISCIPLINARY COMMITTEE OF KENYA NUTRITIONISTS

AND DIETICIANS INSTITUTE.....RESPONDENT

RULING

1. On 15.2.2021, the 1st respondent delivered his decision against the appellant as follows;

- i. That Mr. Michael Ouma Odero (registration no. G2298/17) is guilty of professional gross misconduct under Section 26 paragraph 1 (c) of Cap 253B.**
- ii. That Mr. Michael Ouma Odero's registration certificate and individual practice license be suspended for a period of 2 years inclusive of removal of his name from the register of KNDI.**
- iii. That Mr. Michael Ouma Odero's business license be revoked for two years and henceforth surrender his individual and private practice license to KNDI as per the provisions of Section 26(4) of Cap 253B.**
- iv. Mr. Michael Odero will be at liberty to apply for re-admission into the register of the council and thereafter for renewal of his practicing and business licences through the office of the CEO upon expiry of suspension period.**
- v. The office of the Chief Executive Officer of the institute to take action on ii and iii with immediate effect.**

2. Being aggrieved, the appellant preferred this appeal. The appellant took out the motion dated 26th February 2021 whereof he sought for the following orders;

- i. THAT this application be heard ex-parte in the first instance.**
- ii. THAT pending the hearing and determination of this application inter-pares, there be a stay execution of the judgement/order and or decision delivered on 15th February 2021 and all consequential orders arising therefrom by the Kenya Nutritionists and Dieticians Institute Disciplinary committee in Disciplinary Committee Disciplinary Case no. KNDI/Disciplinary/FL/00001 against Mr. Michael Ouma Odero**
- iii. THAT this application be heard inter-partes as a matter of urgency on such date and at such time as this honourable court may direct.**
- iv. THAT pending the hearing and determination of the appeal hereof, there be a stay execution of the judgement/order and or decision delivered on 15th February 2021 and all consequential orders arising therefrom by the Kenya Nutritionists and Dieticians Institute Disciplinary committee in Disciplinary Committee Disciplinary Case no. KNDI/Disciplinary/FL/00001 against Mr. Michael Ouma Odero.**
- v. THAT the costs of this application be in the cause.**

3. The motion is supported by two affidavits sworn by the appellant.

The respondents filed grounds of opposition to resist the application. Parties were directed to file written submissions.

4. I have considered the grounds stated on the face of the motion and the facts deponed in the affidavits filed in support. I have further considered the grounds of opposition and the written submissions. The main order sought is for an order for stay of execution of the decision of the 1st respondent pending appeal.

5. The appellant stated that unless the order is granted he will suffer substantial loss in that he will be forced to close his practice even before his appeal is heard. The respondents did not deny the assertion that the appellant would be forced to close his practice unless an order for stay is granted.

6. A close perusal of the orders made by the 1st respondent shows that if an order for stay is not granted the appellant’s registration certificate and practicing license will stand suspended and revoked.

7. A reading from the orders issued by the respondent against the appellant will reveal that if the order for stay is not granted the following will take effect:

- i. The registration certificate and the individual practice licence of the appellant shall stand suspended for a period of 2 years.
- ii. The name of the appellant shall stand removed from the registrar of Kenya Nutritionists and Dietitians Institute (K.N.D.I)
- iii. The appellant’s business license shall stand revoked for two years.

8. It is therefore clear to me that the appellant has shown the substantial loss it would suffer if the order for stay is not granted.

9. In the end, I find the appellants motion dated 26.2.2021 to be meritorious. Consequently, an order for stay of execution of the decision of the 1st respondent is granted pending appeal. Costs to abide the outcome of this appeal.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 8TH DAY OF OCTOBER, 2021

.....

J. K. SERGON

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent