



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CONSTITUTION AND HUMAN RIGHTS DIVISION

PETITION NO. 128 OF 2019

**IN THE MATTER OF ALLEGED THREAT OF CONTRAVENTION OF
ARTICLES 22, 23, 27(1), 47 AND 50 OF THE CONSTITUTION OF KENYA 2010**

AND

IN THE MATTER OF INTENDED CANCELLATION OF THE PETITIONER'S SPECIALIST RECOGNITION

AND

IN THE MATTER OF THE MEDICAL PRACTITIONERS AND DENTIST'S ACT, CAP. 253

BETWEEN

DR. SAMIRA DEDHIA SONI.....PETITIONER

AND

HON. SHAKEEL SHABBIR.....1ST RESPONDENT

DR. MUKESHI JOSHI.....2ND RESPONDENT

REGISTRAR MEDICAL PRACTITIONERS & DENTISTS BOARD....3RD RESPONDENT

THE NATIONAL ASSEMBLY.....1ST INTERESTED PARTY

OPHTHALMOLOGICAL SOCIETY OF KENYAINTENDED INTERESTED PARTY

RULING

1. The Intended Interested Party through an application dated 27th May 2020 seek the following orders:-

a) Spent.

b) That the Honourable Court be pleased to order that the Ophthalmological society of Kenya be joined in this Petition as an Interested Party.

c) That the Honourable Court be pleased to make reasonable provision for the costs of this application

2. The application is premised on the grounds on the face of the application that:-

a) That the Ophthalmological Society of Kenya was the complainant against the Petitioner which brought about the purported cause of action in this petition.

b) That the Ophthalmological Society of Kenya has been involved with the Petitioner's case and it is therefore important that it be joined in this case to help the court in determining the suit.

c) That as a society to which the petitioner and the 1st respondent belongs, it is vital that the intended interested party be joined to the suit to agitate its position on behalf of the other members of the society.

d) That the presence before this court of the Ophthalmological Society of Kenya is otherwise necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the petition.

e) That it is otherwise just and reasonable to grant the orders sought.

3. The Petitioner is the only party in this petition who is opposed to the proposed Interested Party's application.

4. The Petitioner filed ground of opposition to the Proposed Interested Party's application dated 27th May 2020 in which the Petitioner contends:-

a) That the Petitioner in the petition dated 29th May, 2019, seeks the following orders, amongst others "A permanent injunction restraining the 3rd Respondent from cancelling the license of the Petitioner pursuant to recommendations/directions from parties.

b) That the Intended Interested Party does not work for Parliament, and/or is not a committee of Parliament.

c) That the Intended Interested Party does not work for the 3rd Respondent.

d) That the letter dated 20th March, 2015 annexed by the Intended Interested Party to the Hon. Rachel Nyamai has already been processed by Parliament and a directions made, the Petitioner is challenging the decision made by Parliamentary Health Committee and if the Intended Interested Party has anything else to say they ought to channel them to Parliament.

e) That Mr. Muchai Gachago who was then a Consultant Ophthalmologist and Chairperson of the Ophthalmological Society of Kenya was a member of a task force constituted by the 3rd Respondent on 21st September, 2018 that made the following recommendations amongst others: "There was no evidence to doubt the competence of Dr. Samir Soni as an Ophthalmologist as she has appropriate knowledge and she had acquired the requisite skills for her practice with no documented compliant on her clinical practice" as such he cannot purport to have anything new to offer, refer to paragraph 15 and 16 of the Petition.

f) That no evidence exists to demonstrate that Muchai Gachago has been authorized by the Ophthalmological Society of Kenya to swear any affidavit on its behalf and as such the affidavit is incompetent. That Mr. Muchai Gachago is a busybody who ought not be allowed to muddle this proceedings.

5. On 2nd June 2020 this Court directions, it granted the Petitioner 14 days to file and serve response to the Proposed Interested Party's application and upon service with Proposed Interested Party submissions to file submissions within 5 days from the date of service. This matter was set down for mention on 7/7/2020. The Petitioner did not file submission in response to the proposed Interested Party's application as directed by this Court.

6. I have considered the Proposed Interested Party's application and the Petitioner's grounds of opposition. From the same the issue for consideration is one; thus:-

a) Whether the proposed Interested Party has demonstrated that it qualifies to be enjoined as Interested Party in this Petition.

7. The Proposed Interested Party in its application and affidavit sworn by Dr. Muchai Gachago sworn on 27th May 2020 is deponed that the Applicant herein initially raised the issue of the Petitioner's lack of qualification to offer the specialized medical service she purported to offer. It is urged that the matter was so serious, that her lack of qualification led to the recommendations made by the Parliamentary Select Committee on Health, which compelled the Petitioner to move this Court in this Petition. The proposed Interested Party was the complainant against the Petitioner. It is demonstrated that Applicant was involved with the Petitioner's case. That both the Petitioner and 1st Respondent belong to the Proposed Interested Party Society. It is Applicant's contention that its presence before Court is necessary in order to enable the Court effectually and completely adjudicate upon and settle all questions involved in this Petition.

8. The Petitioner filed grounds of opposition dated 15th January 2020 but did not file Replying Affidavit to controvert the Proposed Interested Party's averments in its affidavit. The grounds as filed do not rebut the Proposed Interested Party's contention, that it has identifiable stake or legal interest or duty in the proceedings before this Court, and that it is not a party to the proceedings.

9. Under **Order 1 Rule 10(2) of the Civil Procedure Rules**, the Court has power to order any person, whose presence before the Court is necessary in order to enable the Court effectually and completely adjudicate upon and settle all questions involved in the suit be added. The Court further has discretion under **Order 53 Rule 3(4) of the Civil Procedure Rules** to hear any person who ought to have been served with pleadings in an application for Judicial Review.

10. ***Rule 2 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013***

(otherwise referred to as “Mutunga Rules”) gives the meaning of an “Interested Party” in the following terms:-

“’Interested Party’ means a person or entity that has an identifiable stake on legal interest or duty in the proceedings before the Court but is not a party to the proceedings or may not be directly involved in the litigation.”

11. **Rule 7(1) and (2) of the Mutunga Rules** provides for the joinder of an Interested Party to the proceedings; that a person may with the leave of the court make an oral or written application to be joined as an Interested Party and that Court may on its own motion join any Interested Party to the proceedings before it.

12. Upon consideration of the proposed Interested Party’s application and upon consideration of the conditions required to be satisfied for a party to be enjoined as Interested Party and as set out under **Rule 2 of the Mutunga Rules**; I am satisfied that the proposed Interested Party has demonstrated that it has identifiable stake or legal interest or duty in proceedings herein in which it is not a party and is not directly involved in the litigation. I further find that the presence of the proposed Interested Party is necessary in order to enable the Court effectually and completely adjudicate upon and settle all questions involved in this suit.

13. The Proposed Interested Party’s application dated 27th May 2020 is meritorious and is accordingly allowed. I make the following orders:-

a) The proposed Interested Party is joined to these proceedings as 2nd Interested Party. The 2nd Interested Party do file and serve its responses within 7 days from the date of this ruling.

b) Costs be in the cause.

Dated, Signed and Delivered at Nairobi on this 16th day of July, 2020.

J. A. MAKAU

JUDGE