REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL CASE NO. 42 OF 2018

ISLAM SULEIMAN ISMAIL.....PLAINTIFF

VERSUS

MEDICAL PRACTITIONERS & DENTISTS BOARD.....DEFENDANT

RULING

1. By way of plaint dated 1st March, 2019, the Plaintiff/Applicant filed the suit herein against the Defendant/Respondent seeking the following reliefs:

(a) A declaration that the decision of the Defendant in preliminary Inquiry Committee No. 38 of 2014 Islam Suleiman Ishmail v Dr. Sundeep K. Chavda and Alfarooq Hospital is null and void and the same is hereby quashed.

(b) An order that the Defendant do look into the Plaintiff's complaint afresh by calling the Plaintiff and his witnesses as well as Dr. Sundeep K Chavda and Alfarook Hospital for hearing of the Plaintiff's complaint then give a ruling.

(c) In the alternative to prayer (b) above the Defendant be ordered to hear the Plaintiff's appeal lodged on 31st May, 2016.

(d) Costs of this suit be paid by the Defendant.

2. The Defendant filed a Statement of Defence and denied the Plaintiff's claim. It is contended that the Plaintiff's case does not disclose any reasonable cause of action and that the court has no jurisdiction to hear and determine the same.

3. Subsequently, the Defendant filed the application dated 18th June, 2018 seeking orders that the Plaintiff's suit be struck out. It is stated in the grounds in the body of the application and the affidavit in support that under the Medical Practitioners and Dentists Board Act (hereinafter Act), a party who is dissatisfied with the decision of the Medical Practitioners and Dentists Board (hereinafter Board) has a right of appeal to the High Court and not before the Board. That the decisions of judicial or quasi-judicial bodies can only be challenged through Judicial Review proceedings and not by way of a plaint as is the case herein.

4. It is averred that the Plaintiff (Patient) lodged a complaint with the Board which wrote to the concerned Practitioner and Hospital and requested for a full report on the complaint and also requested for copies of documents concerning the treatment and management of the patient. That following a response thereto, the Preliminary Inquiry Committee (hereinafter Committee) of the Board reviewed the complaint and the documents availed and made it's findings and recommendations. That the decision of the Board was also communicated to the parties.

5. The application is opposed. It is denied in the replying affidavit that the decision of the Board was communicated to the Plaintiff. It is further stated that the Plaintiff was not asked by the Board to supply it with the documents or evidence in his possession the same way they did with the doctor and the Hospital complained against. That the rules of natural justice were not complied which smacked of bias. It is further contended that the Plaintiff's Appeal to the main Board has not been dealt with, hence the filing of the suit herein.

6. I have considered the application, the response to the same and the submissions by counsel for the respective parties.

7. Both parties have relied extensively on the Medical Practitioners and Dentists Act Cap 253 Laws of Kenya (hereinafter Act). I have considered the provisions of the said Act and the Rules made thereunder. I will proceed to analyze the pertinent provisions thereof.

8. Section 4 of the Act provides for the establishment of the Board to be known as the Kenya Medical Practitioners and Dentists Board.

9. Section 20 of the Act deals with disciplinary proceedings. Section 20(6) makes provision for appeals. The said provision stipulates as follows:

"A person aggrieved by a decision of the Board under provisions of the section may appeal within thirty days to the High Court and in any such appeal the High Court may annul or vary the decision as it thinks fit."

Thus a person who is dissatisfied with decision of the Board has a right of appeal to the High Court. Although the Plaintiff's counsel has submitted that the Appeal to the Board is yet to be heard, no copy of the said appeal has been exhibited herein and no provision of the said Act and Rules has been pointed out to this court as granting the Board powers to hear an appeal from it's Preliminary Inquiry Committee.

10. The Medical Practitioners and Dentists (Disciplinary, proceedings) Procedure Rules in part II provides for proceedings relating to conviction and infamous conduct in a professional respect. Rule 3 thereof provides for the establishment of the Preliminary Inquiry Committee.

11. Rule 4 which provides for the functions of the Committee stipulates as follows:

> **"4 (1) The functions of the Preliminary Inquiry Committee shall be to receive and review complaints against a medical practitioner or dentist and to determine and report to the Board whether an inquiry should be held, pursuant to section 20 of the Act, in respect of the medical practitioner or dentist.**
>
> **4(2) Subject to paragraph (1), the Preliminary Inquiry Committee after considering the complaint and making such inquiries with respect thereto as it may think fit, shall –**
>
> **(a) if of the opinion that the complaint does not warrant reference to the Board for inquiry, reject the complaint and so inform the chairman;**
>
> **(b) if of the opinion that the complaint does warrant reference to the Board, cause it to be referred to the Professional Conduct Committee together with its findings and recommendations."**

12. Thus the Committee is empowered, after considering the complaint and making inquiries to reject the complaint summarily without referring it to the Board.

13. The Plaintiff has complained that the rules of natural justice were not complied with by the Committee. In this regard, I agree with that Defendant's counsel's submission that in judicial or quasi-judicial proceedings, a dissatisfied party has the liberty to move the High Court by way of Judicial Review proceedings.

14. The principles of the law applicable in an application for the striking out of pleadings were well set out in the case of **D.T.Dobie &Company (Kenya) Limited v Joseph Mbaria Muchina & Another [1980] eKLR**. Although the court has an inherent jurisdiction to dismiss a case which is scandalous, frivolous, vexatious and an abuse of the court process, it's a drastic remedy which ought to be exercised sparingly only in plain and obvious cases when it is clear that the action cannot succeed or is in some way an abuse of the court process. The parties cannot be driven out of the seat of judgment unless the case is unarguable.

15. As stated by Madan, J in the case of **D.T.Dobie (supra)**:

> **"A court of justice should aim at sustaining a suit rather than terminating it by summary dismissal. Normally a law suit is for pursuing it.**
>
> **No suit ought to be summarily dismissed unless it appears so hopeless that it plainly and obviously discloses no reasonable cause of action, and is so weak as to be beyond redemption and incurable by amendment. If a suit shows a mere semblance of a cause of action, provided it can be injected with real life by amendment, it ought to be allowed to go forward for a court of justice ought not to act in darkness without the full facts of a case before it."**

16. In the case at hand, it is this court's view that the Plaintiff's case cannot be salvaged by amending the plaint. The Plaintiff has not followed any procedure known in law in respect of appeals from the decisions made by the Defendant. Consequently, I find the application has merits and I allow the same. The Plaintiff's case is hereby struck out with costs.

Date, signed and delivered at Nairobi this 20th day of Nov., 2019

B. THURANIRA JADEN

JUDGE