



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

HUMAN RIGHTS AND JUDICIAL REVIEW DIVISION

PETITION NO. 511 OF 2013

PETER CORNELIS JACOB KRIJGERPETITIONER

VERSUS

KENYA MEDICAL PRACTITIONERS &

DENTIST BOARD.....1ST RESPONDENT

DR. FREDRICK OWITI

T/A CHIROMO LANE MEDICAL CENTRE2ND RESPONDENT

DR. IGADIZA AKIDIVA

T/A AKIDIVA MEMORIAL HOSPITAL3RD RESPONDENT

JUDGMENT

Introduction

1. In the petition dated 14th October 2013, the petitioner alleges violation of his rights under the Constitution by the respondents. His claim is lodged against the 1st respondent, a statutory body established under section 4 of the Medical Practitioners and Dentists Act, Cap 253 of the Laws of Kenya, which heard and dismissed his complaint against the 2nd and 3rd respondents, a consultant psychiatrist and a medical doctor respectively against whom the petitioner also alleges violation of his rights.
2. The genesis of the petition was a custody dispute pitting the petitioner and his estranged wife (now deceased), one Stella Othuogo Odede, in Nairobi Children's Case No 608 of 2007. The dispute involved the custody of their child Iman Ezra Owuor Krijger. The Children Court had directed the production of the minor in court, but Stella had alleged that the minor could not attend court on that day as he was indisposed, and had produced a letter dated 7th April, 2010 from the 3rd respondent attesting to that fact.

3. By a letter dated 15th April 2010, the petitioner wrote to the 3rd respondent asking for particulars regarding the minor's admission to his clinic. The 3rd respondent did not reply and so the petitioner filed a complaint against him with the 1st respondent.
4. On or about 30th June 2010, the petitioner lodged a second complaint with the 1st respondent, this time against the 2nd respondent. His complaint was that the 2nd respondent had disclosed confidential information to a third party without the petitioner's authority and/or consent. The 1st respondent heard and dismissed both complaints. Aggrieved by the decision of the 1st respondent on his two complaints, the petitioner has now filed the present petition in which he seeks orders which are reproduced below verbatim:
 1. *A declaration that his rights to human dignity guaranteed under Article 28 of the Constitution have been violated by the 1st, 2nd and 3rd respondents.*
 2. *A declaration that his rights to privacy under Article 31 (c) of the Constitution have been violated by the 1st and 2nd respondent.*
 3. *A declaration that his rights to access justice guaranteed under Article 48 of the Constitution have been violated by the 1st respondent.*
 4. *A declaration that his rights and legitimate expectation to fair and just hearing guaranteed under Article 50 (1) of the Constitution have been violated by the 1st respondent.*
 5. *An Order for under Article 23 (3) (f) of the Constitution: an Order of Certiorari removing into this court for the purpose of being quashed and quashing the proceedings and the determination of the 1st respondent with regard to Complaints 35b and 35a lodged by the petitioner against the 1st and 2nd respondent and 3rd respondent respectively.*
 6. *An Order under Article 23 (3) (f) of the Constitution: an Order of mandamus directed to the 1st respondent, compelling it to carry out investigations and make determinations with regard to Complaints Number 35b and 35a lodged by the petitioner against the 1st and 2nd and 3rd respondents respectively.*
 7. *A declaration that the petitioner's rights under Article 8, 10 and 12 of the Universal Declaration of Human Rights 1948, applicable to Kenya by dint of Article 2 (5) of the Constitution have been violated by the 1st, 2nd and 3rd respondents.*
 8. *Compensation under Article 23 (3) (e) of the Constitution as damages for the deliberate and inordinate delay, laxity and apathy by the 1st respondent.*
 9. *Compensation under Article 23 (3) (e) of the Constitution as damages for the breach of the constitutional right to privacy by the 2nd respondent.*
 10. *Interest on all monetary awards, at court rates from the date of judgment until payment in full.*
 11. *Costs of the suit and interest thereon at court rates from the date of filing suit until payment in full.*
 12. *Any other or further relief that the court may deem apt in the circumstances.*

The Case for the Petitioner

5. The petitioner's case is contained in his petition dated 14th October 2013 and supported by his affidavit of the same date. He also filed submissions dated 7th April 2014, which were highlighted

by his Learned Counsel, Mr. Lubulellah.

6. The petitioner submits that his petition is mainly concerned with the conduct of the 1st respondent during its hearing and determination of his complaints against the 2nd and 3rd respondents. According to the petitioner, the crux of his case is that he made a complaint to the 1st respondent about the conduct of the 2nd and 3rd respondent who are medical practitioners and subject to the disciplinary process of the 1st respondent.
7. He alleges violation of his right to privacy by the 2nd respondent through the disclosure of private information without his consent. With regard to the 3rd respondent, the petitioner's complaint is that he authored a letter that was misleading.
8. The petitioner alleges that the 1st respondent failed to carry out its mandate to investigate the complaints against the 2nd and 3rd respondents and considered irrelevant matters, culminating in a breach of the petitioner's right to a fair hearing. He further argues that he was not given an opportunity to cross examine the 3rd respondent, who did not appear before the 1st respondent.
9. The petitioner also alleges violation of his rights under Article 47 by the 1st respondent by its dismissal of his complaint against the 2nd and 3rd respondents without giving reasons.
10. In response to a challenge to the joinder of the 2nd and 3rd respondents in the petition which is challenging mainly the decision of the 1st respondent, the petitioner submits that all parties adversely or otherwise mentioned in the petition should be joined as parties to the suit as the court can only make orders which are binding against the parties to the suit; and that the orders that he was seeking have an impact one way or another against all three respondents. He relies on **Order 1 Rule 3** of the **Civil Procedure Rules 2010** and **Rule 4 (b)** in support of this argument.
11. It is also his submission that the above provisions of law provide that any person may be sued where the relief claimed arises out of a series of transactions and any common question of law or fact would arise. As the conduct of both the 2nd and 3rd respondent related to **Nairobi Chief Magistrate's Children Court Case No 608 of 2007 Peter Cornelius Jacob Krijger -vs- Stella Othuogo Odede** and culminated to proceedings at the 1st respondent, the petitioner contends that the same questions of law and fact would arise as against the 2nd and 3rd respondents on whether they were in breach of their professional duty, and with regard to the proceedings conducted by the 1st respondent against the 2nd and 3rd respondents. Mr Lubulellah relied on the holding in the case of **Satrose Ayuma and 11 Others -vs- The Registered Trustees of the Kenya Railways Staff Retirement Benefit Scheme and 3 Others eKLR** to submit that the Bill of Rights can be enforced against any person, including a private citizen.
12. With regard to the alleged violation of his rights under the Constitution of Kenya and the Universal Declaration of Human Rights, the petitioner alleges that the 3rd respondent authored a letter dated 7th April 2010 with the sole purpose of misleading the court handling the custody dispute between him and his wife. He submits that this not only amounts to a breach of human dignity but also to the dignity of the court.
13. The petitioner alleges that the 2nd respondent grossly violated his right to privacy by disclosing confidential information to a third party without his consent through a letter dated 14th April 2010. He claims that the contents of the said letter were untrue and therefore defamatory. He further claims that the 2nd respondent had attended to his wife (now deceased) and so had contact with him; had no authority to write the said letter whose contents were untrue; and that the letter did not contain factual and imperative evidence in the best interest of the minor as the petitioner was ultimately granted custody of the minor.

14. It is the petitioner's further contention that the 1st respondent failed to discharge its legal duty to carry out proper and independent investigations regarding the petitioner's complaint against the 2nd and 3rd respondents; that the investigations the petitioner carried out revealed that the minor had never been admitted at the 3rd respondent's hospital; that he also discovered that the 2nd respondent was not licensed at the time of writing the offending letter, information that was made available to the 1st respondent yet in its findings, the 1st respondent did not address the issue.
15. The petitioner further argues that the 1st respondent erred in fact and disregarded material facts leading to the petitioner's complaints against the 2nd and 3rd respondents and in particular the practicing status of the 2nd respondent. He claims that as a result, the 1st respondent was in breach of his legitimate expectations that it would make independent investigations, and hear and determine the complaints against the 2nd and 3rd respondents expeditiously and with due regard to procedure. He alleges that his complaints were lodged on 30th June 2010 and 20th May 2010 but that they were ultimately resolved and he was informed about the resolution on or about March 2013, almost three years later.
16. The petitioner further submits that the 1st respondent considered matters that were extraneous to the complaint. He illustrates this by submitting that the complaint against the 3rd respondent related to his authoring a document which was untrue, but that the Health and Fitness Committee in its finding stated that the minor had since recovered without making any findings on his complaint. He submits that there was therefore a breach of his right to a fair hearing.
17. The petitioner makes further complaints with regard to the hearing before the 1st respondent, among them: that there was improper consolidation of the complaints against the respondents so that at some point it was uncertain which complaint the Health and Fitness Committee was adjudicating upon since the complaints against the 2nd and 3rd respondents were distinct though connected in that they arose out of Children Court Case No 608 of 2007; that correspondence to him was also muddled up with one complaint being referred to as the other, and the 1st respondent therefore treated his complaints in a cursory manner even though every complaint brought before a court or tribunal of competent jurisdiction ought to be handled with the seriousness it deserves no, matter its triviality.
18. The petitioner also alleges that the 1st respondent did not give him any reasons for arriving at its decision to dismiss his case; that the proceedings before it were in breach of the Medical Practitioners and Dentists Code of Professional Conduct and Discipline due to the 1st respondent's laxity and apathy in discharging its mandate; and that the proceedings were also in contravention of Articles 8, 10 and 12 of the Universal Declaration of Human Rights, 1948 and were a sham and a mockery of justice.
19. To the contention by the respondents that he has filed a civil claim, namely **Civil Suit No 419 of 2010, Peter Jacob Krijger –vs- Dr. Frederick Owiti**, the petitioner submits that in the suit which was filed on 6th September, 2010, he seeks damages in defamation and doctor/patient confidentiality, not breach of fundamental rights; that it was filed after he had lodged a complaint with the 1st respondent against the 2nd respondent as he had legitimate expectations that it would be heard and determined including the breach of the fundamental right to privacy; and the 1st respondent having failed to substantially deal with the issues he had raised before it, he filed the present petition.
20. The petitioner submits further that the 2nd respondent has now filed an application in **Civil Suit No 419 of 2010** seeking to have the plaint struck out on the basis of the petition; that he has sought to have the petition herein dismissed in limine through his Preliminary Objection; and it was his contention therefore that if both the Preliminary Objection and application are allowed, he will be left with no remedy. In that regard he relies on the decisions in **Samura Engineering Limited**

and 10 Others –vs- Kenya Revenue Authority 2012 eKLR, C.O.M –vs- Standard Group Limited and Another 2013 eKLR and Kokwo Multi-Purpose Co-op Society –vs- Principal Secretary Ministry of Lands Housing and Urban Development and 3 Others 2014 eKLR for the proposition that it is the duty of the Court to determine, on the facts as pleaded and presented, whether or not there has been a violation of the petitioner’s rights, but not to decide whether there is another suitable remedy or forum.

21. He submits that it is only fair and equitable that he should be compensated justly for the breaches committed by the respondents who have made him live in constant self-doubt and low self-esteem and who have morally degraded him, and that he should also be awarded the costs of the petition.

The Case for the 1st respondent

22. On 3rd March 2014, the 1st respondent filed an undated replying affidavit sworn on its behalf by Dr Francis M. Kimani. It also filed submissions dated 15th May 2014 which were highlighted by its Learned Counsel, Mr. Munge.

23. The 1st respondent states that the petitioner lodged two complaints with the Board on 20th May 2010 and 30th June 2010 or thereabouts against the 2nd and 3rd respondents. The Board then immediately wrote to the respondents seeking comprehensive reports, statements and documents on the complaints. It states further that it received responses from the respondents and the matters were referred to a member of the Board for an evaluation before further reference to either the Preliminary Inquiry Committee or the Health and Fitness Committee of the Board for inquiries. It states that thereafter, the complaints were referred to the Health and Fitness Committee whose members had the professional expertise and specialization to hear and determine the issues in the complaints.

24. According to the 1st respondent, on 18th January 2012, the complaints were heard before the Health and Fitness Committee. At the hearing, the petitioner appeared with his advocate and they also cross examined the 2nd respondent. The 1st respondent states further that on 5th June 2012, the complaints were fixed for further inquiry before the Health and Fitness Committee but were adjourned as an issue arose about additional documents; that they were fixed for further inquiry on 26th September 2012 after all documents had been availed to the Board; that on that date the Committee deliberated on the complaints and evaluated all the documents presented before it and recommended that the complaints be closed as they had no merit to warrant reference to the full Board or Tribunal.

25. The 1st respondent avers that the recommendations of the Health and Fitness Committee were presented to the full Board in its next sitting, and upon deliberation and evaluation of the complaints, the full Board adopted the recommendations of the Committee as the Board’s decision and communicated it to the parties.

26. Dr. Kimani avers that the petitioner was given ample opportunity to be heard during the inquiry before the Board’s Committee and he participated without raising any objections with regard to the procedure followed. He states that the Board considered the complaint fairly without digressing to the other extraneous issues involving the petitioner and his family.

27. It is the 1st respondent’s submission that the law allows parties dissatisfied with its decision the right of appeal to the High Court but no such appeal was filed by the petitioner. It is its case that it has not contravened any constitutional rights of any of the parties in this matter but has acted in a very professional manner and with the interest of all parties under consideration.

28. The 1st respondent further submits that the petitioner has failed to discharge the burden of proof imposed upon him by section 107(1) of the Evidence Act, Cap 80 Laws of Kenya, and though he

has made numerous allegations with regard to the alleged violation of his fundamental rights, he has not demonstrated how such rights have been violated, denied or infringed by any of the respondents. The 1st respondent has relied on the decision of the Court of Appeal in the case of **Mumo Matemu -vs- Trusted Society of Human Rights Alliance and 5 Others (2013) eKLR**.

29. The 1st respondent further submits that it did discharge its legal mandate under Section 20(1) of the Medical Practitioners and Dentists Act, Cap 253, Laws of Kenya, and the Rules made thereunder. It submits that upon receipt of the petitioner's complaint, the Board wrote to the 2nd and 3rd respondents in a timely manner requiring them, as practitioners registered by the Board, to respond to the complaints by the petitioner; that the 2nd and 3rd respondents did respond to the complaints; that they subsequently attended the meetings in which the complaints were discussed and an inquiry undertaken; and that the petitioner also attended the disciplinary meetings and was duly represented by his Counsel who had an opportunity to cross-examine the 2nd and 3rd respondents and review all documents relied upon during the inquiry.
30. It is its case that the present petition questions the merits of the 1st respondent's decision on the complaints and is basically an appeal against the Board's decision framed and clothed as a constitutional petition, and the entire petition is therefore incompetent and bad in law as the petitioner's remedy against the Board's decision, if any, lies under section 20 of the Medical Practitioners and Dentists Act which gives the petitioner a right of appeal against the decision. It has relied on the decision of the Court of Appeal in the case of **Abok James Odera T/A A. J Odera & Associates -vs- John Patrick Machira T/A Machira & Co. Advocates (2013) eKLR**, which explains the role of the Court when dealing with a first appeal as being to re-evaluate, re-assess and re-analyse the evidence on the record and then determine whether the conclusions reached by the trial court should stand or not, which is what the petitioner is asking this Court to do.
31. The 1st respondent submits that all the parties were given a chance to participate in the inquiry and the issues at hand arose after the decision was communicated to the parties; that the petitioner and all the other parties were accorded a fair hearing; that the petitioner's advocate had the opportunity to cross-examine the respondents and never raised the issues under this limb during the inquiry.
32. With regard to the contention that the petitioner was not given any reasons for the decision that was reached by the Board, the 1st respondent submits that it did give reasons for its decision which are set out in the letter dated 8th January, 2012 annexed to the petitioner's affidavit as "PCJK-40".
33. The 1st respondent asked the Court to exercise caution in addressing the issues pleaded in the petition as **H.C.C.C. NO. 419 of 2010** between the petitioner and the 2nd respondent is pending and, even though the Board is not a party in the matter, the petitioner is seeking in this petition to cement his claim in the civil suit against the 2nd respondent which is an abuse of the court process. It is its case that the petition is an abuse of the court process and should be dismissed with costs to the respondents.

Case for the 2nd Respondent

34. The 2nd respondent filed a Notice of Preliminary Objection dated 11th February 2014 and a replying affidavit sworn on 18th February 2014. His case was presented by Learned Counsel, Mr. Ojwang Agina.
35. In the Preliminary Objection, the 2nd respondent argues that the petition should be dismissed *in limine* and the costs thereof be borne by the petitioner as prayers 1, 2, 7, 9, 10 and 11 sought against him in the petition closely mirror the prayers in **Nairobi High Court Case No 419 of 2010, Peter Cornelius Jacob Krijger -vs- Dr. Fredrick Owiti** and to that extent, this petition is

sub judice. It is also his case that the prayers sought against the 1st respondent at prayer 5 cannot issue as the Board did not *act ultra-vires* or exceed its jurisdiction in determining the petitioner's complaint against the 2nd respondent; and that the petition is a brazen abuse of the court process as it is a judicial review application disguised as a petition.

36. The 2nd respondent admits that the petitioner lodged a complaint against him with the 1st respondent and made various allegations against him; and that the petitioner is a vexatious litigant as is evident from **Nairobi Chief Magistrate's Children Court Case No 608 of 2007 Peter Cornelius Jacob Krijger -vs- Stella Othuogo Odede**.

37. The 2nd respondent contends that the petitioner's medical condition described in his letter dated 14th April 2010 to the Nairobi Children's Court through Philip Ocharo Esq Advocate was factual and imperative evidence in the best interests of the child who was the subject of the dispute before the Court, a position he contends is supported by Chapter 4.4 of the Code of Professional Conduct and Discipline regulations.

38. He contends that the petitioner, a citizen of Netherlands currently residing in Kenya, refused to furnish him with his medical history before he came to Kenya to enable him form a comprehensive view of his psychiatric status. It is his submission that the petitioner's allegation that his right to privacy under **Article 31 (c) of the Constitution** was violated is false, as is his allegation that his right to human dignity was violated.

39. The 2nd respondent further submits that the rights and freedoms that the petitioner alleges were violated are not absolute and are subject to limitation. It is his view that the petition does not disclose any reasonable cause of action against him and is scandalous, frivolous and vexatious and otherwise an abuse of the process of the court.

Case for the 3rd Respondent

40. The 3rd respondent also opposes the petition and has filed a replying affidavit sworn on 28th November 2013 and submissions dated 5th May 2014. Learned Counsel, Mr Kisera, presented his case.

41. The 3rd respondent agrees with the 1st and 2nd respondents that the petition is misconceived and an abuse of the court process which stems from a matrimonial dispute between the petitioner and his wife now deceased.

42. According to the 3rd respondent, on 7th April 2010, a minor male patient, Iman Ezra K. Krijger, was presented to him by his mother, Stella, for treatment, and that he rendered such treatment in the normal course of practice. The minor was diagnosed as suffering from acute malaria and upper respiratory tract infection, and he recommended absolute bed rest for 3 days. The 3rd respondent states that at the time, he did not know either the minor or his mother, and that he later on learnt that the minor was the subject of a custody case in Nairobi where the said Stella had availed his medical note to account for why she could not produce the minor to court on a particular day which was within the time the minor was unwell.

43. The 3rd respondent avers that he came to learn of the custody case when the 1st respondent informed him of the petitioner's complaint against him and required a response from him.

44. The 3rd respondent further avers that the petitioner visited his clinic to enquire into the matter regarding the minor but he could not avail any information to him as he was a total stranger to him and not the one who had presented the minor for treatment. He did, however, supply information regarding the minor to the 1st respondent when it sought the information from him; and that the information was eventually considered and he was exonerated.

45. It is the 3rd respondent's deposition that his note on the minor was submitted to a court of law which was seized of the custody case and if there was any dispute with regard to its correctness, the court seized of the matter was the correct forum to raise the issue.
46. It is his submission that the 1st respondent properly dealt with the petitioner's complaint against him in accordance with the law as can be observed from the proceedings before and correspondence by and with the Board. It was his submission further that the 1st respondent did not act outside its mandate in dismissing the petitioner's complaint; that the proceedings and the correspondence relating to the petition which are annexed to the petition do not indicate any unfairness or unlawful or arbitrary conduct on the part of the 1st respondent.
47. It was also his case that the letter of 7th April 2010, having been duly given judicial attention by the Children's Court, cannot be the subject of the petition as the petitioner did not in any way challenge the findings of that court on the letter. The 3rd respondent also agreed with the 1st respondent that the petitioner had a right of appeal against the decision of the 1st respondent, which he did not pursue, and he prays that the petition be dismissed with costs.

Determination

48. I have read the respective pleadings and submissions of the parties, and considered the documents relied on in support of their cases. In my view, two issues arise for determination in this matter. The first is whether the present petition is properly before me or, put differently, whether the issues raised by the petitioner can properly be determined in a petition alleging violation of constitutional rights. The second issue, which will flow from a determination of the first issue in favour of the petitioner, is whether the petitioner has demonstrated violation of his fundamental rights and freedoms by the respondents.
49. As submitted by Counsel for the petitioner, the core of the petitioner's case revolves around the decision of the 1st respondent on the petitioner's complaints against the 2nd and 3rd respondents. The petitioner is aggrieved by the said decision and challenges the facts that the 1st respondent took into account when it reached its decision, as well as the considerations it made in arriving at that decision.
50. The 1st respondent has submitted that a party aggrieved by its decision has a right of appeal under Section 20 of the Medical Practitioners and Dentists Act which provides at section 20(6) that:

(6) A person aggrieved by a decision of the Board under the provisions of this 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.

51. A party in the position of the petitioner is thus granted a right to appeal to the High Court challenging the decision of the Board. This would allow the Court to enter into a merit review of the decision, which this Court cannot do in a petition alleging violation of constitutional rights.
52. In the case of **Oluoch Dan Owino –vs- Kenyatta University, Petition No. 54 of 2014** this Court stated as follows:

[34] In addressing my mind to the issues raised in this petition, I must at the outset decline the invitation by the petitioners to enter and inquire into the merits of the case against them before the respondent's Students' Disciplinary Committee. As has been held in many decisions in this and other jurisdictions, for the court to do so would be to arrogate to itself the mandate of an appellate body entering into a merit review of the decisions of the respondent. The duty of the court in an inquiry such as is now before me is confined to checking the respondent's decision for any

illegalities, unreasonableness or procedural improprieties, that is non-compliance with the rules of natural justice. This view of the matter was reiterated by the Court of Appeal in **Civil Appeal No. 180 of 2013-Isaack Osman Sheikh -vs-IEBC & Others** where the Court expressed itself as follows:

“A judicial review of administrative, judicial and quasi-judicial action and decisions of inferior bodies and tribunals by the High Court in exercise of its supervisory jurisdiction flowing from Article 165(6) of the Constitution is not in the nature of an appeal. It concerns itself with process and is not a merit review of the decision of those other bodies. And it does not confer on the High Court a power to arrogate to itself the decision-making power reserved elsewhere.”

53.The Court in the Oluoch Dan Owino case went on to observe as follows:

[35] *This is also the position well-articulated in the House of Lords decision in Chief Constable vs Evans [1982] 3ALL ER 141 in which the Lord Chancellor, Lord Hailsham of St. Marylebone, stated at p 143:*

“This remedy, vastly increased in extent, and rendered, over a long period in recent years, of infinitely more convenient access than that provided by the old prerogative writs and actions for declaration, is intended to protect the individual against abuse of power by a wide range of authorities, judicial, quasi-judicial, and, as would originally have been thought when I first practiced at the Bar, administrative. It is not intended to take away from those authorities the powers and discretions properly vested in them by law and to substitute the courts as the bodies making the decisions. It is intended to see that the relevant authorities use their powers in a proper manner.” (Emphasis added)

54.In this case, it was submitted by the respondents, and was not disputed by the petitioner, that no appeal had been lodged against the decision of the 1st respondent. The petitioner now asks this Court, in effect, to substitute its own decision for that of the 1st respondent, which is the body vested by statute with the mandate to determine whether a medical practitioner is guilty of professional misconduct. This, the Court cannot do.

55.The petitioner has alleged violation of its rights under the Constitution by the respondents. With regard to the 1st respondent, such violation could only arise if procedural improprieties in the course of the proceedings before it were established. However, the petitioner seems to be saying that while he was heard by the Board, it did not determine the dispute in his favour, and that therefore this amounted to a violation of his right under Article 50. I have, however, read the minutes of the Board and noted that he was represented by Counsel, and there is nothing to indicate he was denied a chance to present his case or that his Counsel was not permitted to cross-examine the respondents.

56.In the circumstances, and the 1st respondent not having found any professional misconduct on the part of the 2nd and 3rd respondent, this Court is unable to find anything on the material before me that can be said to amount to a violation of the petitioner’s constitutional rights under **Articles 28, 31, 48 and 50 (1) of the Constitution** and **Articles 8, 10 and 12 of the Universal Declaration of Human Rights**. The Court notes also that the petitioner has a civil claim in defamation against the 2nd respondent currently pending, where he can properly ventilate his claim regarding violation of his right to privacy.

57.This petition is therefore dismissed, but with no order as to costs.

Dated, Delivered and Signed at Nairobi this 10th day of March 2015

MUMBI NGUGI

JUDGE

Mr. Lubulellah instructed by the firm of Lubulellah & Associates Advocates for the petitioners

Mr. Munge instructed by the firm of Muriu, Mungai & Co. Advocates for the 1st respondent

Mr. Ojwang Agina instructed by the firm of Agina & Associates Advocates for the 2nd respondent

Mr. Kisera instructed by the firm of Omonde Kisera & Co. Advocates for the 3rd respondent