

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL APPEAL NO. E523 OF 2022**

**DR. SIMON MATUI KAVITA.....1ST**  
**APPELLANT**  
**JUJA ROAD HOSPITAL.....2<sup>ND</sup> APPELLANT**

**VERSUS**

**DISCIPLINARY AND ETHICS**  
**COMMITTEE OF KENYA MEDICAL PRACTITIONERS &**  
**DENTISTS COUNCIL.....1<sup>ST</sup> RESPONDENT**  
**KENYA MEDICAL**  
**PRACTITIONERS & DENTISTS COUNCIL.....2<sup>ND</sup> RESPONDENT**

**AND**

**HELLEN WANGUI WANJIRU**  
**ON BEHALF OF**  
**THE LATE SCHOLASTICA WANJIRU.....INTERESTED**  
**PARTY**

**(Appeal from the ruling and orders, of 17<sup>th</sup> June 2022, on an inquiry by the Disciplinary and Ethics Committee of the Kenya Medical Practitioners and Dentist Council (Dr. Abdi Mohamed), in KMPDCC No. 48 of 2020)**

**RULING**

1. I am unable to determine this appeal, as neither a complete record of appeal nor the original trial or inquiry records have been availed. Order 42 rule 13(4) of the Civil Procedure Rules has not been fully complied with.
2. I see, on record, a copy of the proceedings and the impugned ruling. However, the documents referred to in the ruling, at paragraphs 1, 2, 3 and 4, have not been filed. That is to say a copy of the complaint, dated 2<sup>nd</sup> September 2020; letter dated 1<sup>st</sup> September 2020; letter dated 31<sup>st</sup> August 2020; medical report dated 31<sup>st</sup> August 2020; scan report dated

28<sup>th</sup> August 2020; statements dated 1<sup>st</sup> September 2020; and service agreement for blood dated 5<sup>th</sup> March 2020, and related documents.

3. This is a first appeal, and I sit on it as a first appellate court. The duty and mandate of a first appellate court was set out, a long time ago, in *Selle & Another vs. Associated Motor Boat Co. Ltd & Others* [1968] EA 123. The principle, set there, is that a first appeal is handled, by the appellate court, by way of a retrial, in the sense that the first appellate court must reconsider the evidence, evaluate it itself and draw its own conclusions, bearing in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect.
4. The first appellate court is not bound to follow the findings of fact, of the trial court or quasi-judicial body, if it appears that, either the trial court or tribunal clearly failed on some point to take account of particular circumstances or probabilities materially, to estimate the evidence; or if the impression, based on the demeanour of a witness, is inconsistent with the evidence on the case generally.
5. To enable the first appellate court, discharge its duty and function as such, the retrial, along the lines envisaged in *Selle & Another vs. Associated Motor Boat Co. Ltd & Others* [1968] EA 123, all the material, that was before the trial court or tribunal, must be placed before the first appellate court. Copies of the proceedings and of the impugned decision, alone, will not do. The filings that originated the matter, together with any responses to them, must be placed on record, together with any documents placed before the trial court or tribunal as evidence.
6. The proviso, to Order 42 rule 13(4), identifies the documents that must be availed, for the purpose of the appeal, as the memorandum of appeal, the pleadings and the

decision. In its own words, the provision states, “*the judge may dispense with the production of any document or part of a document which is not relevant, other than those specified in paragraphs (a), (b) and (f).*” “*paragraphs (a), (b) and (f)*” list the memorandum of appeal, the pleadings and the decision.

7. The proceedings conducted, and the decision made, by the trial court or tribunal, are based or dependent on the pleadings or filings, and the hard evidence placed before the trier of facts. The proceedings and the impugned decision can only be properly evaluated, against the said pleadings or filings, and the material evidence. Without the said pleadings or filings, and the material evidence, there can be no appellate justice. The decision of the appellate court would be a leap into the dark.
8. The pleadings are particularly critical. The case, presented in court, by way of evidence, is based on them. On appeal, they would be critical, for the appellate court to evaluate whether the proceedings and the decision were aligned to the decision, and whether the trial court or tribunal appreciated the case that the parties had placed before it. It is the pleadings that form the bedrock of any case, and which shape and determine the direction of the matter.
9. The requirements of Order 42 rule 13(4) of the Civil Procedure Rules are not confined to courts of law only, they apply to all other quasi-judicial bodies, whose decisions are appealable at the High Court. All appeals, to the High Court, have to comply with Order 42 rule 13(4) of the Civil Procedure Rules.
10. Consequently, let the appellants herein comply with Order 42 rule 13 of the Civil Procedure Rules, by lodging, on the record herein, all the material that was before the Kenya Medical Practitioners and Dentist Council, in KMPDCC No. 48 of 2020, to facilitate an effective consideration of their

appeal. This file shall be returned to the relevant registry for compliance. The matter shall be mentioned before the Deputy Registrar. Upon compliance, the file may be returned to me for the judgement. Orders accordingly.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN  
CHAMBERS, AT BUSIA, ON THIS 7<sup>TH</sup> DAY OF OCTOBER 2025.**

**WM MUSYOKA  
JUDGE**

**Mr. Arthur Etyang, Court Assistant, Busia.**

**Ms. Carolyne Oyuse, Court Assistant, Milimani, Nairobi.**

**Advocates**

**Mr. Wangai, instructed by Prof. Kiama Wangai & Company,  
Advocates for the appellant.**

**Ms. Kouna, instructed by Kounah & Company, Advocates for  
the respondent.**

**Mr. Karanja, instructed by Kariuki Karanja & Company,  
Advocates for the interested party.**