



Registered Trustees of the Sisters of Mercy (Kenya) t/a Mater Misericordiae Hospital v Muriithi & another (Civil Appeal 231 of 2019) [2025] KECA 983 (KLR) (30 May 2025) (Judgment)

Neutral citation: [2025] KECA 983 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL 231 OF 2019
F TUIYOTT, JW LESSIT & GWN MACHARIA, JJA
MAY 30, 2025**

BETWEEN

**THE REGISTERED TRUSTEES OF THE SISTERS OF MERCY (KENYA) T/A
MATER MISERICORDIAE HOSPITAL APPELLANT**

AND

**DR. JOHN MURIITHI 1ST RESPONDENT
QUALITY HOSPITALITY SOLUTIONS LIMITED 2ND RESPONDENT**

(Being an appeal from the Ruling and Order of the High Court of Kenya at Nairobi (J. N. Onyiego, J.) dated 8th November 2018 in H.C. ACEC. 3 OF 2018)

JUDGMENT

1. This matter was heard with Civil Appeal No. 20 of 2019 The Registered Trustees of The Sisters of Mercy (Kenya) T/A Mater Misericordiae Hospital vs Dr. John Muriithi & 5 Others (No 20 of 2019) as the two matters raise similar issues of fact and law.
2. In the presence of learned counsel representing the parties herein:

Mr. Ngugi for the appellant, Mr. Odede for the 1st respondent, Mr Gachuba for the 2nd respondent and Mr. Mwangi for the 3rd respondent, the Court informed counsel and parties that it would at the point of preparing the judgment/s decide whether to render two substantive judgments or whether one judgment would abide the outcome of the other. Having keenly reviewed the facts, law and submissions in this matter, we have come to a decision that the two matters are so similar, and that the latter option saves on judicial time and energy.
3. A second issue concerns the fate of the notice of grounds for affirming the decision dated 21st April 2024 and filed on 22nd April 2024 by the 2nd respondent. At plenary hearing of the appeal, we pointed out to counsel Gachuba that the notice was filed out of time, in breach of the provisions of rule 96(2)



of the Court of Appeal Rules, 2022, as it was filed on the very day of the hearing. We implored counsel to abandon the notice. While counsel conceded the lateness, he ploughed on to argue the issue of res judicata raised in the notice. We now make the order that the notice of grounds for affirming the decision filed on 22nd April, 2024 is hereby struck out and the ground raised therein is not properly before us.

4. By parity of the reasons given in the judgment in No. 20 of 2019 delivered on 22nd November 2024, the appeal partially succeeds to the extent that the appellant can pursue a private action for compensation pursuant to Sections 51 and 53 of the Anti- corruption and Economic Crimes Act without first obtaining a conviction against the respondents, but at the Civil Division of the High Court at Nairobi. The cross-appeal fails in its entirety. Each party to bear its own costs on both the appeal and the cross-appeal.
5. This judgment should have been made at the time of delivery of the judgment in Civil Appeal No. 20 of 2019, but this did not happen. We apologise to parties for the unintentional failure.

DATED AND DELIVERED AT NAIROBI THIS 30TH DAY OF MAY 2025.

F. TUIYOTT

JUDGE OF APPEAL

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J. LESIIT

JUDGE OF APPEAL

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F. W. NGENYE-MACHARIA

JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR.

