



**Hamptons Hospital Limited v Principal Magistrate, Butere Law Courts;  
Medionics Health Care Ltd (Interested Party) (Judicial Review Application  
E001 of 2023) [2024] KEHC 839 (KLR) (31 January 2024) (Judgment)**

Neutral citation: [2024] KEHC 839 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
JUDICIAL REVIEW APPLICATION E001 OF 2023  
SC CHIRCHIR, J  
JANUARY 31, 2024**

**IN THE MATTER OF AN APPLICATION BY THE APPLICANT,  
HAMPTONS HOSPITAL LIMITED FOR JUDICIAL REVIEW ORDERS  
OF CERTIORARI AND PROHIBITION  
IN THE MATTER OF BUTERE MCCC E048 OF 2021 MEDIONICS  
HEALTH CARE LIMITED VS. HAMPTONS HOSPITAL LTD.**

**BETWEEN**

**HAMPTONS HOSPITAL LIMITED ..... APPLICANT**

**AND**

**PRINCIPAL MAGISTRATE, BUTERE LAW COURTS ..... DEFENDANT**

**AND**

**MEDIONICS HEALTH CARE LTD ..... INTERESTED PARTY**

**JUDGMENT**

1. The Applicant's Notice of motion dated January 30, 2023 seeks for the following orders;
  - i. *Certiorari* to remove into the honourable court for the purposes it being quashed all proceedings currently subsisting before Butere MCCC E048 of 2021 *Medionics Healthcare limited v Hamptons Hospital limited*.
  - ii. *Certiorari* to remove into the honourable court for the purposes it being quashed the orders and directions issued on 19<sup>th</sup> January, 2022 in Butere MCCC E048 of 2021 *Medionics Healthcare limited v Hamptons Hospital limited*.



- iii. Prohibition directed at prohibiting any further proceedings in Butere MCCC E048 of 2021 *Medionics Healthcare limited v Hamptons Hospital limited* for want of jurisdiction
  - iv. Any other orders and directions as may appear to this Honourable court just and convenient to grant
  - v. The costs of the application be bore by the Respondent.
2. The Notice of motion was preceded by a chamber summons dated 27<sup>th</sup> January 2023, in which the Applicant sought for leave to file the Notice of motion and for the granting of leave to operate as stay. By an order issued by this court on January 27, 2023 ( P.J Otieno J) leave was granted but stay was declined.
  3. The application was supported by a statutory statement and a supporting affidavit both dated January 27, 2023.

### **The Applicant's case.**

4. The Applicant avers that by way of a plaint dated August 13, 2021 the interested party filed suit against the applicant in Butere MCCC E048 of 2021 *Medionics Healthcare limited v Hamptons Hospital limited*.
5. In response the Applicant filed a chamber summons application that sought for stay of the proceedings and striking out of suit for want of jurisdiction. In the alternative, the Applicant sought that the suit be referred to Arbitration in accordance to Clause 17.1 of the LPO agreement that had been signed between the parties.
6. In the ruling dated November 18, 2021, the respondent stayed all the proceedings and further refereed the matter for arbitration in accordance with the LPO.
7. That Applicant further states that the Honourable Magistrate thereafter gave orders that were outside his jurisdiction by listing the matter for further mentions. That the first mention was scheduled for 18<sup>th</sup> October 2022 and another for 19<sup>th</sup> January 2023.
8. The Applicant contends that the magistrate acted ultra vires by allocating herself a mandate which she did not have namely purporting to supervise the Arbitral proceedings. The Applicant insists that , that was the import of the two subsequent mentions
9. The Applicant argues that the action of the lower court was contrary to article 47, 48 and 50 of the [Constitution](#), a breach of section 14 of the [Civil Procedure Act](#) and section 6 of the [Arbitration Act](#), 1995.
10. The Applicant states that these judicial Review proceedings are meant to rectify the error of the lower court by seeking for the present orders of Certiorari and Prohibition directed at the respondent for the purposes of quashing the lower court proceedings.
11. The Application was not opposed.

### **Submissions**

12. It is the Applicant's submissions that , pursuant to the provisions of section 6 of the [Arbitration Act](#) , 1995, the jurisdiction of the lower court ended when the Magistrate referred the matter to Arbitration; that the moment she listed the matter for further mentions , she exceeded her jurisdiction; that in line with the decision in [Kenya National Examinations Council vs Republic, Exparte Geoffrey Gathenji & Co](#)



*9 others*, Nairobi Civil Appeal No. 266 of 1996, an order of *certiorari* ought to issue to quash the said decision.

13. The Applicant further submits that the action of the learned magistrate amounted to interference of the Arbitration process and that the court should issue an order of prohibition to restrain any further court proceedings while the matter is undergoing arbitration.
14. It is contended that once the honourable Magistrate referred the matter to Arbitration, the Applicant had legitimate expectation that the matter will proceed under the process without any interference from the court.
15. The Applicant faults the lower court for failing to act with procedural fairness.
16. In making a case for the orders of certiorari and prohibition, the Applicant has relied on the Supreme Court case in the *Judges and Magistrate vetting board v centre for Human rights and democracy* (2014) eKLR and *Republic v Kenya Revenue Authority ex parte Yaya Towers Limited* (2008) eKLR.

### Determination

17. I have considered the Application, the supporting Affidavit, the statements and the Applicant's submission.
18. The only issue for determination is whether the lower Court had jurisdiction to follow up on the proceedings of the arbitration proceedings.
19. The leading decision in matters jurisdiction is the case of *Owners of the Motor Vessel "Lilian S" v Caltex Oil (Kenya) Limited* [1989] KLR 1: where the court held: "Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A Court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.
20. A perusal of the court's ruling dated 18<sup>th</sup> November 2021, shows that the courts finding was that the parties had, through their Agreement, ousted the jurisdiction of the court. He therefore stayed the proceedings and referred the matter for Arbitration "in accordance with the terms of the Arbitration clause"
21. Section 10 of the *Arbitration Act*, No. 4 of 1995 stipulates that: "Except as provided in this Act, no court shall intervene in matters governed by this Act."
22. In *Anne Mumbi Hinga vs Victoria Njoki Gathaara* [2009] eKLR, the Court of Appeal restated this legal position thus:

"We therefore reiterate that there is no right for any Court to intervene in the arbitral process, or in the award, except in the situations specifically set out in the *Arbitration Act* or as previously agreed in advance by the parties...." .In other words save as specifically stated by the *Arbitration Act*, the courts can not step in to matters that are subject of Arbitration proceedings.
23. Section 6 of the *Arbitration Act* provides as follows:
  1. "A court before which proceedings are brought in a matter which is the subject of an Arbitration agreement shall, if a party so applies not later than the time when that party enters appearance or otherwise acknowledges the claim against which the stay proceedings are sought stay the proceedings and refer parties to arbitration unless it finds:-



- a). That the Arbitration Agreement was null and void, inoperative or incapable of being performed; or
  - b). That there is not in fact any dispute between the parties with regard to the matters agreed to be referred to Arbitration.
2. Proceedings before the court shall not be confirmed after an Application under subsection (1) has been made and the matter remains undetermined.”
24. The lower court had referred the matter to Arbitration in due compliance with section 6 of the Arbitration Act and the moment it did that its jurisdiction ended. Though the part of the lower court record reflecting the said mentions has not been submitted the cause lists submitted shows that the suit was subsequently listed for mention on two different dates , that is, on the 18<sup>th</sup> November 2022 and 19<sup>th</sup> January 2023.
25. I do agree with the Applicant that by purporting to keep mentioning the matter , the Trial court was attempting to supervise the Arbitration proceedings and in the process arrogating to itself a jurisdiction that it does not have.
26. In accordance with section 10 of the Arbitration Act the court can only interfere to the extent that the said Act authorizes it. The Arbitration Act does not give Authority to courts to supervise proceedings being undertaken under the said Act. The trial court was arrogating itself a jurisdiction that it did not have
27. Where a court makes a decision without or in excess of jurisdiction, the aggrieved party is entitled to orders of *certiorari* ( see the case of Kenya National Examinations council) ( *supra* ).
28. The Applicant has sought for the quashing of the entire proceedings in the lower court suit. This prayer is however misplaced as the court was vested with jurisdiction to make the determination on whether the case should be referred to Arbitration or not. Quashing the entire proceedings will also mean nullifying the order that stayed the court proceedings in the first place. Consequently prayer (a) of the Notice of Motion dated 30<sup>th</sup> January 2023 is hereby declined.
29. The rest of the prayers are merited. consequently, I hereby issue orders as follows:
- a. An order of *certiorari* is hereby issued quashing the orders and directions issued on 19<sup>th</sup> January 2022 or any other order or directions given subsequent to the Ruling delivered on 18<sup>th</sup> November 2021 in Butere CMCC NO. 048 of 2021.
  - b. An order of prohibition is hereby issued against any further proceedings in Butere CMCC NO. E048 of 2021
  - c. Each party to meet their own costs.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 31<sup>ST</sup> DAY OF JANUARY 2024.**

**S.CHIRCHIR**

.....

**JUDGE.**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**



**In the presence of :**

Rono – Court Assistant

No appearance by the parties.

