

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MOMBASA**

**CONSTITUTIONAL & JUDICIAL REVIEW DIVISION**

**CONSTITUTION PETITION NO. E010 OF 2023**

**IN THE MATTER OF ARTICLES 10,19 (2),21 (1),22,23,24 (2) (A) & (B),27 (1) & (2), 40,43, 191(2), 209 (3) (C), 209 (5), 258, OF THE CONSTITUTION OF KENYA,2010 PART 2 OF THE FOURTH SCHEDULE PARAGRAPH 7 (1)**

**AND**

**IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS UNDER ARTICLE 43 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF CONFLICT OF LAWS,TO WIT,THE CONSTITUTION OF KENYA 2010, THE MEDICAL PRACTITIONERS AND DENTISTS ACT,CAP 253,LAWS OF KENYA ON ONE HAND AND THE MOMBASA COUNTY TRADE LICENSING ACT,NO.5 OF 2014 AND THE MOMBASA COUNTY FINANCE ACT NO. 1 OF 2021**

**BETWEEN**

**KENYA ASSOCIATION OF PRIVATE HOSPITALS ..... PETITIONER**

**VERSUS**

**MOMBASA COUNTY GOVERNMENT.....1<sup>ST</sup> RESPONDENT**

**MOMBASA COUNTY ASSEMBLY.....2<sup>ND</sup> RESPONDENT**

**(IN CHAMBERS BEFORE HONOURABLE LADY JUSTICE O.A SEWE ON 3<sup>RD</sup> MARCH, 2023)**

**ORDER**

**UPON READING**, of the application dated 3<sup>rd</sup> March, 2023 Under Article 23(3)(b) & (c) of the Constitution of Kenya and Rules 19 & 23 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms and Enforcement of the Constitution) practice and Procedure Rules, 2012 and all other enabling laws) herein.

**IT IS HEREBY ORDERED:-**

1. **THAT**, the said application be and is hereby certified urgent.
2. **THAT**, a conservatory order be and is hereby granted restraining the respondents either by themselves, agents, servants and/or anyone acting under the instructions and/or directions of the said respondents from imposing, demanding, levying, charging, collecting, retaining or enforcing by criminal prosecution trade license fees and/or single business permit fees upon medical health facilities within the county of Mombasa pending the inter-partes hearing and determination of the said application.
3. **THAT**, the application be served forthwith on the respondent for hearing on 9.3.2023.

**GIVEN UNDER** My hand and seal of this Hon. Court at Mombasa this 3<sup>rd</sup> day of March, 2023



**DEPUTY REGISTRAR  
HIGH COURT KENYA  
MOMBASA**

**ISSUED** at Mombasa this 3 day of March 2023

**PENAL NOTICE:**

*YOU ARE HEREBY informed that if you neglect to obey the order to which this Notice is appended or if you disobey the said Order or any part thereof, you shall be liable to process of execution and contempt for the purpose of compelling you to obey the said order.*