

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 29<sup>TH</sup> MARCH, 2023)

ORDER

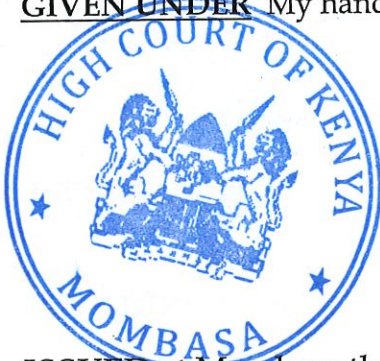
UPON HEARING, of the amended application filed on 17<sup>th</sup> March, 2023 Under Article 23(3)(b) & (c) of the Constitution of Kenya and Rules 19 & 23 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms and Enforcement of the Constitution) practice and Procedure

Rules,2012 and all other enabling laws) in the presence of the counsels Mr Mbugua holding brief for Mr. Wahome Gikonyo for the petitioner Ms Kisingo present for the Respondents herein

**IT IS HEREBY ORDERED:-**

1. **THAT**, pending the inter-partes hearing and determination of the petition, a conservatory order be and is hereby issued 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 or otherwise trade licence fees and/or single business permit fees upon medical health facilities within the county of Mombasa.
2. **THAT**,the costs of the application be costs in the cause.
3. **THAT**, the Respondent to file and serve a response to the petition within 14 days from the date hereof.
4. **THAT**, corresponding leave be and is hereby given to the petitioner to file and serve a supplementary affidavit if need be within 14 days of service of the Respondent's response.
5. **THAT**, further mention on on 3.5.2023 for further directions.

GIVEN UNDER My hand and seal of this Hon. Court at Mombasa this 29<sup>th</sup> day of March, 2023



DEPUTY REGISTRAR  
HIGH COURT KENYA  
MOMBASA

ISSUED at Mombasa this 30 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.*