



**Republic v Advocates Disciplinary Tribunal Law Society of Kenya & 4 others;  
 Ngigi (Interested Party); Sphikas & another (Exparte) (Application E068 of 2021)  
 [2023] KEHC 22867 (KLR) (Judicial Review) (29 September 2023) (Judgment)**

Neutral citation: [2023] KEHC 22867 (KLR)

**REPUBLIC OF KENYA  
 IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
 JUDICIAL REVIEW  
 APPLICATION E068 OF 2021  
 J NGAAH, J  
 SEPTEMBER 29, 2023**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**ADVOCATES DISCIPLINARY TRIBUNAL LAW SOCIETY OF  
 KENYA ..... 1<sup>ST</sup> RESPONDENT**

**ADVOCATES DISCIPLINARY COMMITTEE LAW SOCIETY OF  
 KENYA ..... 2<sup>ND</sup> RESPONDENT**

**CHAIRMAN, DISCIPLINARY COMMITTEE LAW SOCIETY OF  
 KENYA ..... 3<sup>RD</sup> RESPONDENT**

**JOHN WAMITI NJAGI ..... 4<sup>TH</sup> RESPONDENT**

**GEORGE PETER KALUMA ..... 5<sup>TH</sup> RESPONDENT**

**AND**

**ESTHER NJERI NGIGI ..... INTERESTED PARTY**

**AND**

**CONSTANTINE GEORGE SPHIKAS ..... EXPARTE**

**STEPHEN JUMA NDEDA ..... EXPARTE**



## JUDGMENT

1. On 25 May 2021, the *ex parte* applicants were granted leave to file a substantive motion for judicial review. Apart from granting leave, this Honourable Court gave directions on the filing and disposal of the motion in the following terms:

The motion shall be disposed of by way of written submissions and to that end, I direct as follows:

1. The substantive motion be filed and served within seven days of the date hereof.
  2. The respondents to file and serve their response within seven days of the date of service of the applicant's motion.
  3. The applicant to file and serve his written submissions within seven days of the date of service of the respondents' response.
  4. The respondents to file and serve their submissions within seven days of the date of service of the applicant's submissions.
  5. Parties will highlight their submissions on 28 June 2021. Orders accordingly.
2. The applicant eventually filed a motion dated 4 June 2021. There is a payment receipt on the e-portal showing that the motion was paid for on 11 June 2021.
  3. The seven-day period within which the applicants ought to have filed the motion expired on 2 June 2021. The date when the motion was paid for would be the date when the motion was filed. If the application was filed on 11 June 2021, the applicant was ten days out of time.
  4. But even if it was to be assumed that the applicants filed the motion on 4 June 2021 which, as noted, is the date of the motion they would still have been late because leave granted to file it expired on 2 June 2021.

Order 53 Rule 3 (1) states:

3.
  - (1) When leave has been granted to apply for an order of mandamus, prohibition or certiorari, the application shall be made within twenty-one days by notice of motion to the High Court, and there shall, unless the judge granting leave has otherwise directed, be at least eight clear days between the service of the notice of motion and the day named therein for the hearing.
5. If for any reason the applicants could not file the application within the time prescribed by the court, they would have been perfectly in order to apply for extension of time considering that the 21-day window prescribed by the rule 3(1) had not lapsed as at 11 June 2021 when the substantive motion was filed. But they did not. They instead filed the application outside time.
6. What would be the fate of such an application? In my humble view, the leave to file the substantive motion expired seven days from the date when it was granted and the applicants cannot purport to have filed their substantive motion on the strength of leave that had expired. To the extent they did so, their application is a nullity. It is hereby struck out with costs to the respondents and interested party. It is so ordered.

**SIGNED, DATED AND DELIVERED ON 29 SEPTEMBER 2023**



**NGAAH JAIRUS**  
**JUDGE**

