



REPUBLIC OF KENYA



KENYA LAW
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**Chore v Musalani (Civil Appeal 96 of 2019)
[2022] KEHC 14184 (KLR) (21 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14184 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CIVIL APPEAL 96 OF 2019
WM MUSYOKA, J
OCTOBER 21, 2022**

BETWEEN

LAWRENCE MMATA CHORE APPELLANT

AND

GEOFFREY MUSALANI RESPONDENT

*(An appeal arising from the ruling of Hon. B. Ochieng, Chief Magistrate,
delivered on 18 th September 2019 in Kakamega CMCCC No. 9 of 2019)*

RULING

1. Am called upon to determine a motion, dated March 16, 2021. It principally seeks review or variation or setting aside of orders that were made herein, striking out an application dated October 26, 2020, and the reinstatement of that application. It is at the instance of Lawrence Chore Mmata, the appellant. His grounds are the advocate who had held brief for the advocate on record was not aware that the said advocate had in fact paid for the practicing certificate, but the same had not been issued by the Law Society of Kenya. In his affidavit, sworn on March 16, 2021, the appellant avers that Shikhule & Company , Advocates had paid for the practicing certificate, and he attached a copy of a banker's cheque and bank cash receipt .
2. There is an affidavit by Austin M Shikhule, advocate, sworn on October 29, 2021. He avers that he was the one who prepared the memorandum of appeal and the motion, dated October 2, 2019. He asserts that his practicing status was active, and that he had paid for his practicing certificate for 2020, and had been issued with one. He has attached a practicing certificate bearing his name, for the year 2021, dated March 22, 2021. He avers that he had always been active since 2019, and the advocate who held his brief misled the court in saying that he was inactive in 2020, when he filed the application.



3. The respondent reacted to the application, by filing grounds of opposition, dated May 23, 2021. It is averred that the application is frivolous and devoid of merit, was vexatious, and based on the wrong principles of the law .
4. Directions were given on November 3, 2021, for disposal of the motion, by way of written submissions. From the record before me, I can only see written submissions by Ibrahim Alubala, the advocate for the interested party.
5. The impugned application, dated October 26, 2020, had been filed on October 30, 2020, by the firm of Shikhule & Company, Advocates, on behalf of the appellant. It sought joinder of Eshikhoni Auctioneers as an interested party, an order for release of a motor vehicle that that firm of auctioneers had attached in execution, leave to amend an application dated August 16, 2020, and an order to nullify a purported sale of the motor vehicle that the auctioneers had attached. That application was placed before me on January 26, 2021, in the presence of Mr Munyendo, for the appellant, Mr Elung'ata for Mr Matete, for the respondent, and Mr Mukuru, for Eshikhoni Auctioneers. Mr Mukuru informed me that the application dated October 26, 2020 had been filed by an advocate who was not licensed to practice. Mr Munyendo concurred, whereupon I struck out the application. It was the proceedings of that day that have given rise to the instant application.
6. So, the question is, is there merit in the application to review, set aside and vary the orders of January 26, 2021, and to reinstate the application dated October 26, 2020? Am told that the said advocate was in fact compliant as at the October 26, 2020 when he filed those papers. He had paid for the practicing certificate in March of 2020, but he blames the Law Society of Kenya for not issuing him with the practicing certificate as October 26, 2020. Was he complaint? I am afraid there is no evidence to show that Mr Shikhule, the advocate in question, the principal in Shikhule & Company, Advocates, had been licensed by the Law Society of Kenya to practice in 2020. He has not displayed a practicing certificate for 2020, what has been exhibited is the practicing certificate issued to him for 2021. The documents that he has exhibited, as evidence that he had paid for the practicing certificate for 2020, provide no proof at all that the money was from him, and that the bank cash receipt, dated March 5, 2020, and the banker's cheque, drawn on March 5, 2020, were in fact issued to him. There is nothing in those documents connecting him to that payment. If, indeed, he had paid that amount to the Law Society of Kenya, he should have displayed a receipt from the Society as evidence of receipt by it of the payment. In any event, mere payment of the practicing fees, to the Society, in respect of which he has provided no evidence, does not mean the same as being issued with a document certifying that one was licensed to practice.
7. The fact that the advocate who drew and filed the papers in question did not have a valid practicing certificate, at the time he filed the papers, means that the same were drawn and filed through an irregular process, by a person masquerading as qualified to file and participate in a valid court process, an advocate acting contrary to the tenets of the profession that he claims to belong to. It is, to say the least, a most dishonourable conduct. Unfortunately, the overwhelming judicial trend is in favour of overlooking lack of an advocate's practicing licence, to uphold documents drawn and filed by such a person. That being the case, I shall, most reluctantly, as, in my view, the current judicial toleration of such conduct encourages indiscipline within the body of legal practitioners, allow the application dated March 16, 2021, in its entirety. Costs shall be in the cause.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA ON THIS 21st DAY OF October, 2022.

WM MUSYOKA



JUDGE

Erick Zalo, Court Assistant.

Mr. Munyendo, instructed by Oscar Wachilonga & Company, Advocates for the appellant.

Mr. Matete, instructed by Matete Mwelesi & Company, Advocates for the respondent.

Mr. Mukuru, instructed by Ibrahim Alubala, Advocate for Eshikhoni Auctioneers.

