



**REPUBLIC OF KENYA**

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

**JUDICIAL REVIEW APPLICATION NO. 426 OF 2018**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW AND ORDERS OF CERTIORARI AND MANDAMUS**

**AND**

**IN THE MATTER OF LAW REFORM ACT SECTIONS 8 AND 9 CHAPTER 26 LAWS OF KENYA**

**AND**

**IN THE MATTER OF A DECISION BY THE DISCIPLINARY COMMITTEE IN DISCIPLINARY CAUSE NO. 26 OF 2015**

**AND**

**IN THE MATTER OF ARTICLES 10, 22, 23(f), 47 and 48 OF THE CONSTITUTION OF KENYA, 2010**

**BETWEEN**

**REPUBLIC.....APPLICANT**

**AND**

**THE DISCIPLINARY COMMITTEE.....1<sup>ST</sup> RESPONDENT**

**PROF. PAUL MUSILI WAMBUA.....2<sup>ND</sup> RESPONDENT**

**EX PARTE APPLICANT: JOHN KATIKU**

**JUDGMENT**

**Introduction**

1. The *ex parte* Applicant herein, John Katiku (hereinafter “the Applicant”) is an advocate of the High Court of Kenya, practicing as such in the firm of Musyoka Wambua & Katiku Advocates. The Applicant and Prof. Paul Musili Wambua, who is the 2<sup>nd</sup> Respondent herein were partners in the said law firm from 2009 until 1<sup>st</sup> September 2013 when the 2<sup>nd</sup> Respondent retired from the firm. The Applicant contends that upon retirement, the 2<sup>nd</sup> Respondent issued various notices of his retirement to the public as follows:

- a) On 9<sup>th</sup> September 2013, he published a notice in the Law Society of Kenya News Letter, notifying members that he had retired from the firm effective 1<sup>st</sup> September 2013;
- b) On 6<sup>th</sup> September 2013, he issued a Notice in the Kenya Gazette notifying the public that he had retired from the firm effective 1<sup>st</sup> September 2013;
- c) He subsequently opened a law firm by the name of Prof. Musili Wambua & Company Advocates.

2. It is contended that the 2<sup>nd</sup> Respondent went further to write letters to M/s Chase Bank Limited and Kenya commercial Bank Limited, the Firm’s Bankers on 9<sup>th</sup> April 2013 and on 25<sup>th</sup> February 2015 making several allegations against the Applicant. That, following the said letters, the Applicant lodged a complaint for professional misconduct against the 2<sup>nd</sup> Respondent on 18<sup>th</sup> March 2015 with the Law Society

of Kenya Disciplinary Committee which is the 1<sup>st</sup> Respondent herein in Disciplinary Cause No. 26 of 2015. The substance of the Complaint was as follows:

- a) Interference with the affairs of the firm after retirement, by fraudulently issuing the letter dated 9<sup>th</sup> September 2013 on the Firm's letterhead and without authority;
- b) Fraudulently and without authority obtaining and thereafter issuing the letter dated 25<sup>th</sup> February 2015 and using it 1.5 years after retiring from the Firm;
- c) Prying into the affairs of the Firm by fraudulently and deceitfully obtaining the Firm's bank accounts long after retiring from the partnership; and
- d) Misrepresenting information to 3<sup>rd</sup> parties, including the Banks involved and breach of the *res subjudice* doctrine which the same are still pending in Court for determination.

3. The Applicant contends that parties exchanged pleadings in the said Cause until November 2018, and that since then however, the Disciplinary Cause has variously been adjourned for judgment. That, the 1<sup>st</sup> Respondent on 8<sup>th</sup> October 2018 issued orders staying further proceedings in the Disciplinary Cause pending the determination of an Arbitration before the parties. It is the said Ruling of 8<sup>th</sup> October 2015 that is the basis of the instant Application.

### **The Application**

4. Pursuant to leave granted by this Court, the Applicant then filed an application by way of a Notice of Motion dated 22<sup>nd</sup> November 2018, seeking the following orders:

- a) An Order of Certiorari be granted by this Court to bring into this Court and quash the 1<sup>st</sup> Respondent's Ruling/Decision dated 8<sup>th</sup> October 2018 staying further proceedings in Disciplinary Tribunal Cause Number 26 of 2015 lodged by the Applicant against the 2<sup>nd</sup> Respondent.**
- b) An Order of Mandamus be granted by this Court directed to the 1<sup>st</sup> Respondent to consider the merits of the Complaint and to determine Disciplinary Tribunal Cause No. 26 of 2015.**

5. The Applicant's case is grounded on facts contained on the face of the Application, the Statutory Statement dated 22<sup>nd</sup> November 2018 and a Verifying Affidavit sworn on the same date by the Applicant. The Applicant is dissatisfied the said Ruling delivered by the 1<sup>st</sup> Respondent on 8<sup>th</sup> October 2018. He states that the 2<sup>nd</sup> Respondent had maliciously filed a complaint against him before the 1<sup>st</sup> Respondent, being Disciplinary Cause No. 31 of 2016, that he accordingly responded to the Complaint and the 1<sup>st</sup> Respondent thereafter delivered its judgment dismissing the Complaint.

6. According to the Applicant, it is evident from the judgment in Disciplinary Cause No. 31 of 2016 that one of the members of the 1<sup>st</sup> Respondent, one O. Kebira was also in the panel which made the impugned ruling on 8<sup>th</sup> October 2018 in Disciplinary Cause no. 26 of 2015. It is contended that the Judgment of the 1<sup>st</sup> Respondent in Disciplinary Cause No. 31 of 2016 was well considered, well-reasoned and made after a thorough examination of the evidence and the merits of the Complaint before it.

7. The Applicant cited page 3 of the Judgment where the 1<sup>st</sup> Respondent held thus:

**“as per the Gazette Notice No. 12811, Annexure JK-6 (uncontroverted), the Complainant ceased being a partner in the Firm with effect from 1<sup>st</sup> September 2013. We fail to understand therefore how the Complainant questions the happenings in the firm of sometime in November 2013. We also fail to comprehend how the Complainant could protest removal of partnership assets from the Firm by the accused Advocate as set out in paragraph 14 of the Affidavit. To that extent, we find the Complainant has no locus standi”**

8. The Applicant averred that on the question whether the 1<sup>st</sup> Respondent has jurisdiction to adjudicate on matters subject to arbitration between Advocates it was held as follows in the said judgement:

**“The accused advocate has indicated that there is ongoing Arbitration Proceedings in which inter alia Kshs. 4,000,000/- is subject. However, the mandate of this Honourable Tribunal is to inter alia try matters involving the conduct of Advocates either between or amongst themselves. We consider the present dispute one of those matters and hold that this Honourable Tribunal has jurisdiction”**

9. The Applicant contended that the 1<sup>st</sup> Respondent's judgment conclusively determined the following issues:

- a) The fact that the 2<sup>nd</sup> Respondent had retired from the Firm of Musyoka Wambua & Katiku Advocates on 1<sup>st</sup> September 2013 and issued notices to that effect;

b) The 2<sup>nd</sup> Respondent has no *locus standi* to raise complaints on issues relating to the said Firm after his retirement;

c) The 1<sup>st</sup> Respondent has jurisdiction to determine issues of misconduct by Advocates notwithstanding the subsistence of an Arbitration between the Advocates which relate to the Partnership.

10. Noting that the 2<sup>nd</sup> Respondent never appealed against this judgment, it is the Applicant's averment that the findings therein are therefore legally binding. That however, in complete contradiction to its judgment, in its Ruling of 8<sup>th</sup> October 2018, the 1<sup>st</sup> Respondent states at page 1:

**“...in the course of preparing the judgment it has emerged that notwithstanding the voluminous documents filed herein and the acrimony that appears to govern the dispute between the parties, the central issue for determination by us, before we render ourselves on the issue of whether or not the respondent misconducted himself in the matter alleged, is fairly straight forward and within a very narrow scope. That issue is whether or not the Respondent did retire from the Partnership”**

11. It is further contended that the 1<sup>st</sup> Respondent is in violation of statute since it has failed to determine the complaints brought before it judicially. Further, that the 1<sup>st</sup> Respondent has demonstrated unreasonableness by way of disregarding notices issued by the 2<sup>nd</sup> Respondent establishing and confirming that he had retired from the firm of Musyoka Wambua & Katiku Advocates on 1<sup>st</sup> September 2013. It is averred that the decision by the 1<sup>st</sup> Respondent is unreasonable and in violation of the powers and requirement by law to act impartially and without fear or favour. That, the decision did not factor in the judgment in Disciplinary Cause No. 31 of 2016 involving the same parties, and that the 1<sup>st</sup> Respondent had found that the 2<sup>nd</sup> Respondent had retired from the firm on 1<sup>st</sup> September 2013, a decision, the 2<sup>nd</sup> Respondent did not appeal.

12. The Applicant also alleges lack of impartiality by the 1<sup>st</sup> Respondent, in that it only examined the evidence tendered by the 2<sup>nd</sup> Respondent and failed to consider that of the Applicant. The Applicant avers that he tendered evidence showing that the 2<sup>nd</sup> Respondent had retired from the Firm, hence arriving at an inconsistent decision as aforementioned. It is his contention that the 1<sup>st</sup> Respondent's decision violates the principle of legitimate expectation. The Applicant asserts that it was his legitimate expectation that the 1<sup>st</sup> Respondent would uphold and find that the notices issued by the 2<sup>nd</sup> Respondent in the Law Society of Kenya Gazette and in the Kenya Gazette announcing his retirement from the firm, were legally binding, hence admissible as evidence of his retirement. Further, he did not expect inconsistent and/or conflicting decisions from the 1<sup>st</sup> Respondent.

### The Response

#### ***The 1<sup>st</sup> Respondent's Response***

13. The application was opposed by the 1<sup>st</sup> Respondent who filed Grounds of Objection dated 22<sup>nd</sup> January 2019. The grounds of objection were that:

a) The instant Application is totally incompetent, bad in law and an abuse of court process;

b) The Applicant's Notice of Motion Application offends the provisions of Section 8 of the Law Reform Act;

c) The 1<sup>st</sup> Respondent as described amongst the parties is ambiguous and non-existent in law in so far as it relates to the Law Society of Kenya and its members.

14. The 1<sup>st</sup> Respondent further filed a Replying Affidavit sworn on 5<sup>th</sup> April 2019 by its Secretary, Mercy Wambua. Regarding Disciplinary Cause Number 26 of 2015, it is contended that on 19<sup>th</sup> March 2015, the 1<sup>st</sup> Respondent received an Affidavit complaint dated 18<sup>th</sup> March, 2015 from the Firm of Michael Daud & Associates on behalf of the Applicant; against Prof. Paul Musili Wambua (the 2<sup>nd</sup> Respondent). It is averred that the 2<sup>nd</sup> Respondent in response filed a Replying Affidavit dated 20<sup>th</sup> September 2015 and filed with the 1<sup>st</sup> Respondent on even date. That, the Applicant thereafter swore a further affidavit dated 10<sup>th</sup> November. It is contended that the said Disciplinary matter was thereafter canvassed on various dates before a duly constituted bench of the 1<sup>st</sup> Respondent.

15. The 1<sup>st</sup> Respondent avers that it established while preparing the judgment that:

a) To conclusively determine whether or not there was unethical or unprofessional conduct by the 2<sup>nd</sup> Respondent, a determination must be made on whether or not the aforesaid 2<sup>nd</sup> Respondent had retired from the Partnership; and

b) Both the Applicant and the 2<sup>nd</sup> Respondent did not dispute the fact that there was a dispute surrounding the 2<sup>nd</sup> Respondent's withdrawal from the Partnership and that the same was pending for determination before the Arbitrator, Nzamba Kitonga SC.

16. That the 1<sup>st</sup> Respondent consequently delivered a ruling on 8<sup>th</sup> October 2018 staying the proceedings before it pending the determination of the dispute before the Arbitrator. And, that each party was at liberty to move the Tribunal for further directions or orders once the Arbitration proceedings had been dispensed with.

17. The 1<sup>st</sup> Respondent's outlined its mandate under the Advocate's Act to deal with professional misconduct of Advocates and to receive a

complaint lodged by any person against an Advocate and contended that it exercised its quasi-judicial authority. Therefore, that its Ruling of 8<sup>th</sup> October 2018 was :

a) made within the confines of the law;

b) delivered on account of the Applicant's admission that he had filed the Arbitration proceedings after lodging Disciplinary Cause No. 4 of 2015 in compliance with the provisions of the Deed of Partnership and the Partner's Agreement. That, the 1<sup>st</sup> Respondent understood this to mean that the Applicant intended to proceed with Arbitration despite having lodged a complaint with the Disciplinary Tribunal; and

c) made on account of the 2<sup>nd</sup> Respondent's confirmation that his withdrawal from the Partnership and its validity thereof is a subject of dispute presently before the Arbitrator.

18. It is deponed that the Applicant has failed to disclose that throughout the proceedings in Disciplinary Cause No. 26 of 2015, he did not bring to the Tribunal's attention the existence of Disciplinary Cause No. 31 of 2016, making reference to only Disciplinary Cause No. 4 of 2015. Further, he did not disclose that the Tribunal held in Cause No. 4 of 2015, that the arbitration proceedings were the most suitable forum to ventilate the dispute concerning the partnership, which decision has been produced by the 2<sup>nd</sup> Respondent in opposition of the instant Judicial Review proceedings. Based on the foregoing, the Respondent avers that it considered the dispute based on the material placed before it and ruled appropriately; hence it was neither biased nor overlooked any material before it.

19. The 1<sup>st</sup> Respondent contends that the Applicant would suffer no prejudice if the matter is heard and determined conclusively by an Arbitrator. That in any case, the Applicant has not laid sufficient grounds upon which an order for Judicial Review can be granted. It is averred that the Ruling was well reasoned, founded in law and made within the 1<sup>st</sup> Respondent's jurisdiction. It is contended that the avenue to appeal against the decision by the Tribunal is by way of an appeal as provided under Section 62 of the Advocates Act.

### ***The 2<sup>nd</sup> Respondent's Response***

20. The 2<sup>nd</sup> Respondent filed a Replying Affidavit sworn on 17<sup>th</sup> January 2019, in which he termed the instant application as incompetent, frivolous and an abuse of court process. He contends that the application violates the doctrine of exhaustion as there is a statutory laid down procedure under Section 62 of the Advocates Act for appeal by an Advocate aggrieved by the decision of the 1<sup>st</sup> Respondent. It is contended that the Applicant has not demonstrated any exceptional circumstances to justify invoking this Court's jurisdiction without first exhausting the said statutory mechanism. The deponent acknowledges that the dispute in Disciplinary Cause No. 26 of 2015, which is the subject matter in the instant proceedings, revolves around his withdrawal /retirement from the partnership of the firm of Musyoka Wambua & Katiku Advocates. He states that the issue of his withdrawal/retirement from the partnership and the consequences thereof are currently subject to arbitral proceedings before Nzamba Kitonga SC.

21. It is averred that the arbitral proceedings notwithstanding, the deponent and the Applicant have instituted several disciplinary causes against each other for acts and/or omissions during the said partnership or subsequent to the deponent's impugned withdrawal from the partnership. It is contended that the Applicant has failed to disclose to the Court that the 1<sup>st</sup> Respondent has made final determinations in Disciplinary Causes 31 of 2016 and No. 4 of 2015, which determinations were made by differently constituted benches of the Tribunal. It is averred that while the Applicant relies on the decision in Disciplinary Tribunal Cause No. 31 of 2016, that made reference to Gazette Notice No. 12811 regarding the 2<sup>nd</sup> Respondent's withdrawal from the partnership, he does not disclose that the Tribunal held in Disciplinary Cause No. 4 of 2015 that the arbitration proceedings were the most appropriate forum for determination of any dispute concerning the partnership and his withdrawal therefrom.

22. The deponent quoted from page six (6) of the Judgment in Disciplinary Cause No. 4 of 2015 where the 1<sup>st</sup> Respondent found:

**“.....the terms of the partnership were very succinct. Although in the affidavit of the complaint sworn on 12<sup>th</sup> November 2014, it is deponed that the matter under review concerned the conduct of the accused as a member of the honourable profession that is the practice of law, with respect to the complainant and on the basis of the complaint before us and the response thereto by the accused and considering all the material residing in all the affidavits filed herein, we are not persuaded that the matters could not be adjudicated upon in the context of the relevant Arbitration clause. Indeed we are seized of the fact the parties had appointed Nzamba Kitonga SC to be sole arbitrator over the matters thereof.**

**Although we have little information as to the conclusion, if any, in the arbitral proceedings, we do not entertain any doubt that such would be the forum where such matters as raised by the complainant would be comprehensively addressed and resolved.”**

23. It is averred that the Applicant has intentionally failed to disclose the above finding by the 1<sup>st</sup> Respondent so as to mislead this Court. The 2<sup>nd</sup> Respondent pointed out that the decision of one bench of the Disciplinary Tribunal cannot be binding on another differently constituted bench as the same can only be persuasive. The 2<sup>nd</sup> Respondent asserted that the 1<sup>st</sup> Respondent, in their wisdom and exercise of the inherent powers saw it fit to await the determination by the Arbitrator since it would have a profound bearing on the issues for determination in Disciplinary Tribunal Cause No. 26 of 2015. That going by the contents of the impugned Ruling, the 1<sup>st</sup> Respondent only issued an interlocutory order of stay and not a final determination of the dispute therein.

### **The Determination**

24. The parties were directed to canvass the instant application by way of written submissions. Michael Daud & Associates, the advocates on record for the Applicant filed submissions dated 11<sup>th</sup> March 2019. The 1<sup>st</sup> Respondent's submissions are dated 8<sup>th</sup> April 2019, and were filed by its advocates, Nyawira Milimu and Omotto Advocates, while M.M. Gitonga Advocates, the advocates on record for the 2<sup>nd</sup> Respondent filed submissions dated 5<sup>th</sup> April 2019. After considering the pleadings and submissions, I find that the main issues that arise for determination are firstly, whether the Applicant's application is properly before this Court, and if so, whether 1<sup>st</sup> Respondent made an error in law in its ruling made on 8<sup>th</sup> October 2018 in Disciplinary Cause no. 26 of 2015; and lastly, whether the Applicant is entitled to the reliefs sought.

25. On the first issue, the Applicant cited Section 62 (1) of the Advocates Act and submitted that the wording of the section only applies to advocates against whom complaints have been lodged pursuant to Section 60 of the Act, thereby locking out any complainant aggrieved by a decision of the Disciplinary Tribunal and desirous of challenging it by way of appeal. That, in the absence of any appeal mechanisms within the context of advocates disciplinary actions, the instant proceedings have been properly instituted.

26. The 2<sup>nd</sup> Respondent when addressing the question on whether the instant application is bad in law under the doctrine of exhaustion, cited the case of **Geoffrey Muthinja Kabiru & 2 Others v Samuel Munga Henry & 1756 Others [2015] e KLR**: It was submitted that the instant application is bad law under the doctrine of exhaustion as the Applicant has violated the laid down procedure in instituting this suit. Further, that Disciplinary Cause No.26 of 2015 was rightly placed before the 1<sup>st</sup> Respondent and cited section 62 (1) of the Advocates Act and section 9(2) of the Fair Administrative Action Act which prohibits review unless the internal mechanisms for appeal or review and all remedies available under any written law are first exhausted. Also cited were the judicial decisions in **Speaker of National Assembly v Karume (1992) KLR 21 for the policy and rationale justification of the aforesaid doctrine**,

27. The 2<sup>nd</sup> Respondent refuted the averment by the Applicant that he is not an Advocate for purposes of this judicial review application and for the purposes of the proceedings under Disciplinary Cause No.26 of 2015, and hence had no other remedy. He submits that the Applicant nevertheless describe himself as an Advocate in describing the parties in the instant Application.

28. In this regard, the 2<sup>nd</sup> Respondent sought to invoke the doctrine of Estoppel and relies on the Court of Appeal's definition of estoppel in **Serah Njeri Mwobi v John Kimani Njoroge, Civil Appeal No. 314 of 2009**. It was submitted that contrary to the Applicant's assertion, section 60(2) of the Advocates Act refers to "*any aggrieved advocate who is party to the complaint*". Hence, the Applicant was a rightful party to the complaint regardless of the capacity in which his person appeared before the Disciplinary Committee and therefore failed to exercise his right to appeal. That in any case, the Applicant filed the said complaint in Disciplinary Cause No.26 of 2015 in his capacity of an advocate and acted similarly in his filed

29. Sections 9(2) (3) and (4) of the Fair Administrative Action Act provide as follows on the issue of exhaustion of alternative remedies:

**“(2) The High Court or a subordinate court under subsection (1) shall not review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.**

**(3) The High Court or a subordinate Court shall, if it is not satisfied that the remedies referred to in subsection (2) have been exhausted, direct that applicant shall first exhaust such remedy before instituting proceedings under sub-section (1).**

**(4) Notwithstanding subsection (3), the High Court or a subordinate Court may, in exceptional circumstances and on application by the applicant, exempt such person from the obligation to exhaust any remedy if the court considers such exemption to be in the interest of justice.”**

30. Exhaustion of alternative remedies is also now a constitutional imperative under Article 159 (2)(c) of the Constitution, and is exemplified by emerging jurisdiction on the subject, which was initially stated in **Speaker of National Assembly vs Karume (1992) KLR 21** in the following words:

**“Where there is a clear procedure for redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed. Accordingly, the special procedure provided by any law must be strictly adhered to since there are good reasons for such special procedures.”**

31. The doctrine of exhaustion of alternative remedies was further explained by the Court of Appeal in **Geoffrey Muthinja Kabiru & 2 Others vs Samuel Munga Henry & 1756 Others (2015) eKLR** as follows:

**“It is imperative that where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of the Courts is invoked. Courts ought to be fora of last resort and not the first port of call the moment a storm brews..... The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside the courts. The Ex Parte Applicants argue that this accords with Article 159 of the Constitution which commands Courts to encourage alternative means of dispute resolution.”**

32. The contestation as regards the application of this doctrine of exhaustion in the present application is on the meaning and applicability of section 62 of the Advocates Act, which provides as follows:

**“(1) Any advocate aggrieved by order of the Tribunal made under section 60 may, within fourteen days after the receipt by**

him of the notice to be given to him pursuant to section 61(2), appeal against such order to the Court by giving notice of appeal to the Registrar, and shall file with the Registrar a memorandum setting out his grounds of appeal within thirty days after giving by him of such notice of appeal.

(2) The Court shall set down for hearing any appeal filed under subsection (1) and shall give to the Council of the Society and to the advocate not less than twenty-one days' notice of the date of hearing.

(3) An appeal under this section shall not suspend the effect or stay the execution of the order appealed against notwithstanding that the order is not a final order.”

33. Section 60 of the Act provides for complaints against Advocates that are made to the 1<sup>st</sup> Respondent and the orders the 1<sup>st</sup> Respondent can make thereon, while the Advocates Act defines “Registrar” to mean the Registrar of the High Court, and “Court” to mean the High Court. The Applicant is an advocate who lodged a complaint with the Tribunal in Disciplinary Cause No.26 of 2015, in which the impugned was given. Clearly therefore, being an advocate, he is aggrieved person within the context of section 62 of the Advocates Act, irrespective of whether he was the complainant, and his first port of call if so aggrieved would be an appeal under section 62 of the Advocates Act.

34. In particular, given that the Applicant is aggrieved by a ruling delivered by the 1<sup>st</sup> Respondent that affects his practice as an advocate, then in my view section 62 also becomes applicable. An ordinary and contextual interpretation of section 62 leads to the inevitable conclusion that the Applicant ought to have filed an appeal against the impugned decision of 8<sup>th</sup> October 2018, and to this extent his application is incompetently brought before this Court.

35. In any event, this Court also finds that the Applicant is questioning the merits of the 1<sup>st</sup> Respondent’s decision in light of its previous decisions, which is an issue that ought to be canvassed in an ordinary appeal and is not suitable for judicial review, as the Court will have to embark on an examination of evidence of previous decisions made by the 1<sup>st</sup> Respondent and their import and effect. It is notable in this respect that both the Applicant and Respondents sought to rely on various decisions which have been previously decided by the 1<sup>st</sup> Respondent on the same issue that is the subject matter of this application, and any inconsistencies and/or contradictions in the said decisions can only resolved by way of review by the 1<sup>st</sup> Respondent of its own decisions, or on appeal.

36. In the premises, I find that the Applicant’s Notice of Motion dated 22<sup>nd</sup> November 2018 is incompetently filed before this Court, as the Applicant has not exhausted the remedies of appeal available to him. The other issues raised by the application are therefore moot. The said Notice of Motion is accordingly struck out with costs to the Respondents.

37. Orders accordingly.

**DATED AND SIGNED AT NAIROBI THIS 29<sup>TH</sup> DAY OF JULY 2019**

**P. NYAMWEYA**

**JUDGE**