



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MISC. APPLICATION NO. 401 of 2017

ROSEMARY JAJA MBOGO APPLICANT

VERSUS

WANGUI KATHRYN KIMANI 1ST RESPONDENT

THE DISCIPLINARY TRIBUNAL OF

THE LAW SOCIETY OF KENYA 2ND RESPONDENT

RULING

The first respondent is an advocate of the High Court of Kenya, who has been subjected to proceedings before the Disciplinary Tribunal of the Law Society of Kenya in Cause No. 137 of 2014, and Judgment thereon delivered on 15th February, 2016. The Tribunal which is cited as the 2nd respondent herein made the following orders,

- a. The 1st respondent was to pay the applicant Kshs. 1,568,970/= together with interest of 25% per annum from 1st September, 2012 on or before 14th March, 2016.
- b. The 1st respondent was to deposit Kshs. 1,312,500/= with the Law Society of Kenya to be held by the said society pending the assessment of her legal fees.
- c. Upon compliance with orders (a) and (b) above, the 1st respondent was to file her formal and itemized bill(s) of costs with the 2nd respondent for assessment.

Thereafter the matter proceeded before the 2nd respondent, that is the Tribunal, for mitigation and sentencing on 18th April, 2016. At that session, the 1st respondent was admonished and ordered to comply with the orders contained in the judgment as set out above within 30 days, and was also fined Kshs. 150,000/=. Further, the 1st respondent was ordered to pay Kshs. 10,000/= to the Law Society and Kshs. 10,000/= to the applicant as costs.

The 1st respondent was aggrieved by those orders and moved to the High Court by way of Judicial Review Misc. Application No. 113 of 2016. That application was dismissed with costs on 15th September, 2016. The 1st respondent still lodged a Notice of Appeal to appeal the judgment from the Judicial Review application aforesaid. That notice is dated 28th September, 2016. Again, the 1st

respondent applied for stay of execution in the High Court Misc. Application No. 113 of 2016 which however was dismissed on 17th January, 2017.

As at the time of hearing this application, no order for stay had been given by the court. The Law Society of Kenya has deposited and or forwarded to this court the disciplinary proceedings in cause No. 137 of 2014 which contain the orders set out herein above.

There is now before me an application by way of Notice of Motion under Section 61 (1) and (2) of the Advocates Act, Sections 1A and 1B of the Civil Procedure Act and Order 51 Rule 1 of the Civil Procedure Rules for orders that this court adopts the final orders given by the Disciplinary Tribunal of the Law Society of Kenya in Disciplinary Cause No. 137 of 2014, Rosemary Jaja Mbogo Vs. Wangui Kathryn Kimani as orders of this court, and that a decree be extracted in terms of the said final orders, that the applicant herein be granted leave to execute those final orders and that the 1st respondent be ordered to pay the costs of this application.

The grounds upon which the application is based are a repeat of the background of this matter as I have set out above, and the supporting affidavit of the applicant mirrors the same background. The 1st respondent has opposed the application and filed a replying affidavit to that effect. She fears that if the court adopts the decision of the Tribunal she stands to suffer loss and damage because the application is premature, as there is pending an application to vary the orders and her bill of costs filed on 27th April, 2016 has not been taxed. Further, there is a sum of Kshs. 2,000,000/= to be settled concerning handling charges of the lease and her invitation to the applicant has not received any response.

I have considered the nature of the application alongside the material placed before me in support of the application and opposition thereto. The 1st respondent has not complied with the orders of the Disciplinary Tribunal and in particular, the order to deposit some money with the Law Society pending assessment of her fees. She has also not offered or paid the sum ordered to be paid to the applicant. It would appear she has exhausted all the legal avenues available to her and her opposition to the application is a postponement of an obvious eventuality. The application in my view is well merited, the record speaks for itself and must be allowed.

Accordingly I grant orders as prayed in the Notice of Motion filed on 15th September, 2017 in favour of the applicant against the 1st respondent with costs.

Dated, signed and delivered at Nairobi this 23rd Day of November, 2017

A.MBOGHOLI MSAGHA

JUDGE