REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION

JUDICIAL REVIEW APPLICATION NO. 218 OF 2015

IN THE MATTER OF AN APPLICATION BY KAMUNDA DANIEL NJUE FOR LEAVE TO APPLY FOR A JUDICIAL REVIEW ORDER OF CERTIORARI

AND

IN THE MATTER OF PROCEEDINGS BEFORE THE DISCIPLINARY COMMITTEE

AND

IN THE MATTER OF DISCIPLINARY COMMITTEE CAUSE NUMBER 66 OF 2013

AND

IN THE MATTER OF SECTIONS 55, 57 AND 60 OF THE ADVOCATES ACT CAP 16

BETWEEN

REPUBLIC .....APPLICANT

VERSUS

DISCIPLINARY COMMITTEE……..……..…….RESPONDENT

BONIFACE AGORO OTIENO..…….… .....….....INTERESTED PARTY

EX-PARTE APPLICANT

DANIEL KAMUNDA NJUE

JUDGEMENT

Introduction

1. By a Notice of Motion dated 14th July, 2015, the *ex parte* applicant herein, **Daniel Kamunda Njue**, seeks the following orders:

1. **Certiorari removing to this court for the purposes of quashing the judgment of the Respondent in Cause No. DCC 66 of 2013 in the matter of Kamunda Njue & Co. Advocates.**

2. **Costs be paid by the Respondent and the Interested Party jointly and severally.**

Ex Parte Applicant's Case

2. According to the applicant, the Interested Party filed suit on 4th July 2012 in **CMCC No. 3623 of 2012 Boniface Otieno Agoro vs. Martin James Mwalimu & Anor** and obtained ex-parte orders on 4th July 2012 freezing the accounts of the 1st Defendant. In its defence the 1st defendant raised the issues that the alleged debt was on account of corrupt practices wherein in the Plaintiff demanded a kick back after a tender was awarded to the 1st Defendant and that the Plaintiff was a public officer at the time the tender was awarded who was in charge of the tendering process.
3. It was averred that the applicant's firm then filed a Notice of Change of Advocate on 4th October 2012 and an Order dated 5th October 2012 was issued by the Chief Magistrate stating, *inter alia*, that the temporary orders issued on 5th July 2012 had not been extended and had since lapsed.
4. However, the Interested Party on 26th October 2012 wrote a complaint to the Court complaining that he had suffered loss following the unfreezing of the 1st Defendant's account to which the Court responded on 29th October 2012 giving a concise history of the matter and pointing out, *inter alia*, that there were no orders granted on 15th October 2012. Despite that the Interested Party on 8th November 2012 complained to the Honourable Chief Justice and blamed, *inter alia*, his own advocate **Auta Nyakundi** for failing to attend court and extend the interim orders after 10th August 2012.
5. It was averred by the applicant that as no action has even been taken since late 2012 by the Interested Party to prosecute his suit, his firm filed an application seeking dismissal of the suit for want of prosecution, which application was fixed for hearing on 7th August 2015.
6. On 29th November, 2012, the applicant received a letter of complaint from the Law Society of Kenya on 29th November 2012 and by a letter dated 21st March 2013 the Interested Party's advocates demanded from the applicant's firm the sum of Kshs. 957,241.00 and stated, *inter alia*, that the Applicant was professionally negligent in not following due court process and caused reconstruction of a court file and on account of the foregoing, the Interested Party suffered loss.
7. It was averred that an Affidavit of Complaint was filed by the Interested Party on 26th March 2013 before the Disciplinary Committee and alleged that the applicant and his former advocates, **Auta Nyakundi**, caused the complainant loss in excess of Kshs. 2 million and sought recovery of the said sum. To this complaint the applicant responded *inter alia* that on 25th September 2012 the matter had been stood over generally and that the interim orders had not been extended and that the Plaintiff's advocate was to blame for failing to extend the interim orders and that the applicant owed no duty of care to the Plaintiff who was not his firm's client.
8. Despite the foregoing on 13th April 2015 the Disciplinary Committee delivered its judgment and found the applicant guilty of professional misconduct and convicted him and was required before the Tribunal on 13th July, 2015 for mitigation and sentencing.
9. According to the applicant, the Respondent in its judgment Disciplinary Committee/Committee handed down the following its verdict to the effect that by failing to serve a Notice of Change of Advocates the applicant had violated Order 9 Rules 5 and 6 of the ***Civil Procedure Rules*** which was a mischievous act and that it was irregular for the applicant not to have invited the Plaintiff's advocates for the mention before the Chief Magistrate hence it was strange that the Chief Magistrate would proceed ex-parte. It was further found that the applicant's conduct amounted to ''sharp practice'' as he hid information from the court in order to achieve results favorable to the Defendant. To the Tribunal, although the applicant had not broken the law, his conduct was unethical and dishonorable and had caused injustice to the Plaintiff and consequently, the Disciplinary Committee found the Applicant guilty of Professional Misconduct for engaging in Sharp Practice.
10. It was contended by the applicant that the Respondent arrived at its decision through a flawed process and misdirected itself on the law. To him, the judgement in Disciplinary Committee Cause Number 66 of 2013 was biased, unlawful and contravened the doctrine of *sub judice* as the complainant has never prosecuted is claim in **Milimani CMCC No. 3623 of 2012 Boniface**

11. It was further contended that the said judgment was unmeritorious and amounted to sitting on appeal from the decision of the court when it determined on 5th October 2012 that the interim orders issued on 5th July 2012 had lapsed and had not been extended. The applicant asserted that the Interested Party's claim in the suit was a chose in action and cannot be converted into a claim for recovery of sums lost before the Disciplinary Committee. It was disclosed that by the time the Notice of Change was filed on 4th October 2012 the interim orders had not been extended after 10th August 2012 hence the Respondent erred by finding the Applicant guilty of professional misconduct when in actual fact almost 2 months had passed before the Applicant came on record.
12. It was reiterated that the Respondent erred by casting aspersions at the Chief Magistrate without hearing any representations from her and erred in convicting the Applicant when he had no role or control over the orders made by the Chief Magistrate who simply confirmed the correct position that the interim orders had long since expired. It was contended that the Respondent erred by impliedly casting a duty of care on the Applicant when in fact the Interested Party was not his client and in failing to find that any negligence should have been directed against the Complainant's previous advocate who failed take any steps in reinstating the interim orders in August 2012 or prosecuting the suit.
13. It was further contended that the Respondent contravened the ***Advocates Act*** by sitting as a Committee instead as a Tribunal under section 57 of the Act.

Respondent's Case

14. On the part of the Respondent Tribunal, it was contended that under section 4 of the ***Law Society of Kenya Act*** (Chapter 18 Laws of Kenya) the objects for which the Law Society of Kenya is established are, *inter alia*, to protect and assist the public in Kenya in all matters touching, ancillary or incidental to the law. It therefore falls within the objects of the Law Society of Kenya through the Disciplinary Committee to receive, hear and determine complaints lodged against advocates such as the Advocate herein.
15. It was the Respondent's case that the Disciplinary Committee herein is established under Section 57 of the ***Advocates Act*** (Cap 16 of the Laws of Kenya) for purposes, *inter alia*, of dealing with professional misconduct on the part of advocates. Under Section 60 of the ***Advocates Act*** the Disciplinary Committee herein is empowered to receive complaints from any person as against an advocate for professional misconduct.
16. It was averred that pursuant to said provisions of the ***Advocates Act***, a complaint was received by the Disciplinary Committee (also known as the Disciplinary Tribunal) from **Bonface Otieno Agoro,** the Complainant, against the professional conduct of the Advocate. Consequently Disciplinary Cause Number 66 of 2013 was preferred against the Advocate herein and the Advocate herein was duly given Notice of the plea taking date and all the proceedings thereafter in accordance with the principles of Natural Justice. It was contended that it is not in dispute that the Advocate herein was duly served and granted a hearing at all times before the Disciplinary Committee as regards the Complaint lodged against him in Disciplinary Cause Number 63 of 2013, and when the Committee indeed noted on one occasion on the 5th of August, 2013 that the proper address for the Advocate had not been indicated, it postponed the hearing of the matter to the 4th of November, 2013. Accordingly, the Advocate was also served by the Disciplinary Committee with a Notice of the Complaint lodged against him dated the 5th of July, 2013 and pursuant thereto, the Advocate on 10th June, 2014 filed a Replying Affidavit dated the 5th of June, 2014 with the Disciplinary Committee after which the said parties filed their written submissions before the Committee.
17. It was the Respondent's case that having given the parties a chance to present their side of the case it delivered a judgment dated the 13th of April, 2015 and reserved mitigation and sentencing for the 13th of July, 2015.
18. The Respondent reiterated it is empowered under section 60 of the ***Advocates Act*** to enquire into complaints of professional misconduct against any advocate and the said complaint may be lodged by any person. Further, the issue of professional misconduct brought against an Advocate may be enquired into at any point and there is no law that bars the Committee from dealing with a

complaint of professional misconduct when a case is being heard by a court and especially where the issue of professional misconduct has not been raised before the said court and a determination made on the same. Furthermore, as per sections 57 and 60 of the ***Advocates Act***, the Committee is mandated to adjudicate over complaints involving professional misconduct amongst members of the Law Society of Kenya. It was its view that the matters enquired into only related to the issue of professional misconduct, which as per the Advocates Act may be enquired into at any point. Further, the judgment issued against the Ex-parte applicant only delved into the issue of professional misconduct and at no point in time was the ex-parte applicant ordered to pay any sums as per the judgment.

19. With regard to the Applicant's contention that the complaint against him was heard by the Disciplinary Committee and not by the Disciplinary Tribunal, the Respondent averred that the applicant submitted himself to a disciplinary process based on a complaint filed against him as an Advocate of Kenya and that he at no one point during the said hearings under the disciplinary process, raised any issue as to the disciplinary organ sitting as a Disciplinary Committee and/or as a Disciplinary Tribunal. It was in any case contended that the members who sat under the previous Disciplinary Committee in their constitution as a bench are the same members under the Disciplinary Tribunal save for members who may have been replaced with regard to Advocates exercising their legal mandate to elect representatives to the said body hence no prejudice was suffered by the Applicant as the change in name from the Disciplinary Committee to the Disciplinary Tribunal was only but cosmetic in nature.
20. To the Respondent, the Applicant did not set down sufficient grounds upon which an Order for Judicial Review could be granted and urged the Court to dismiss the application with costs to allow the Respondent proceed with mitigation and sentencing in DCC No. 106 of 2008.

Determinations

21. I have considered the application, the evidence adduced in the form of affidavits and the submissions filed on behalf of the parties herein.
22. The parameters of judicial review were set out by the Court of Appeal in **Republic vs. Kenya National Examinations Council ex parte Gathenji & Others Civil Appeal No. 266 of 1996** as follows:

"Prohibition looks to the future so that if a tribunal were to announce in advance that it would consider itself not bound by the rules of natural justice the High Court would be obliged to prohibit it from acting contrary to the rules of natural justice. However, where a decision has been made, whether in excess or lack of jurisdiction or whether in violation of the rules of natural justice, an order of prohibition would not be efficacious against the decision so made. Prohibition cannot quash a decision which has already been made; it can only prevent the making of a contemplated decision...Prohibition is an order from the High Court directed to an inferior tribunal or body which forbids that tribunal or body to continue proceedings therein in excess of its jurisdiction or in contravention of the laws of the land. It lies, not only for excess of jurisdiction or absence of it but also for a departure from the rules of natural justice. It does not, however, lie to correct the course, practice or procedure of an inferior tribunal, or a wrong decision on the merits of the proceedings...The order of *mandamus* is of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right or no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual. The order must command no more than the party against whom the application is legally bound to perform. Where a general duty is imposed, a *mandamus* cannot require it to be done at once. Where a statute, which imposes a duty, leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is laid, a *mandamus* cannot command the duty in question to

be carried out in a specific way...These principles mean that an order of *mandamus* compels the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed. An order of *mandamus* compels the performance of a duty imposed by statute where the person or body on whom the duty is imposed fails or refuses to perform the same but if the complaint is that the duty has been wrongfully performed i.e. that the duty has not been performed according to the law, then *mandamus* is wrong remedy to apply for because, like an order of prohibition, an order of *mandamus* cannot quash what has already been done...Only an order of *certiorari* can quash a decision already made and an order of *certiorari* will issue if the decision is without jurisdiction or in excess of jurisdiction, or where the rules of natural justice are not complied with or for such like reasons."

23. In **Municipal Council of Mombasa vs. Republic & Umoja Consultants Ltd Civil Appeal No. 185 of 2001** was held:

"Judicial review is concerned with the decision making process, not with the merits of the decision itself: the Court would concern itself with such issues as to whether the decision makers had the jurisdiction, whether the persons affected by the decision were heard before it was made and whether in making the decision the decision maker took into account relevant matters or did take into account irrelevant matters…The court should not act as a Court of Appeal over the decider which would involve going into the merits of the decision itself-such as whether there was or there was not sufficient evidence to support the decision."

24. In **Republic vs. Kenya Revenue Authority *Ex parte* Yaya Towers Limited [2008] eKLR** it was held that the remedy of judicial review is concerned with reviewing not the merits of the decision of which the application for judicial review is made, but the decision making process itself. It is important to remember in every case that the purpose of the remedy of Judicial Review is to ensure that the individual is given fair treatment by the authority to which he has been subjected and that it is no part of that purpose to substitute the opinion of the judiciary or of the individual judges for that of the authority constituted by law to decide the matter in question. Unless that restriction on the power of the court is observed, the court will, under the guise of preventing abuse of power, be itself, guilty of usurpation of power. See ***Halsbury's Laws of England 4th Edition Vol (1)(1) Para 60.***

25. It must be remembered that judicial review is concerned not with private rights or the merits of the decision being challenged but with the decision making process. Its purpose is to ensure that the individual is given fair treatment by the authority to which he has been subjected. See R vs. Secretary of State for Education and Science ex parte Avon County Council (1991) 1 All ER 282, at P. 285.

26. The broad grounds upon which the Court grants judicial review remedies were restated in the Uganda case of **Pastoli vs. Kabale District Local Government Council and Others [2008] 2 EA 300,** in which the Court citing **Council of Civil Unions vs. Minister for the Civil Service [1985] AC 2** and **An Application by Bukoba Gymkhana Club [1963] EA 478** at **479** the Court expressed itself as follows:

"In order to succeed in an application for judicial review, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety...Illegality is when the decision-making authority commits an error of law in the process of taking or making the act, the subject of the complaint. Acting without jurisdiction or *ultra vires*, or contrary to the provisions of a law or its principles are instances of illegality. It is, for example, illegality, where a Chief Administrative Officer of a District interdicts a public servant on the direction of the District Executive Committee, when the powers to do so are vested by law in the District Service Commission... Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a

decision. Such a decision is usually in defiance of logic and acceptable moral standards...Procedural Impropriety is when there is a failure to act fairly on the part of the decision-making authority in the process of taking a decision. The unfairness may be in non-observance of the Rules of Natural Justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative Instrument by which such authority exercises jurisdiction to make a decision."

27. The applicant faults the judgement on the ground that it was the the Plaintiff/Interested Party's advocate who was to blame for failing to extend the interim orders and that the applicant owed no duty of care to the Plaintiff who was not his client. According to him, by the time the Notice of Change was filed on 4th October 2012 the interim orders had not been extended after 10th August 2012 hence the Respondent erred by finding the Applicant guilty of professional misconduct when in actual fact almost 2 months had passed before the Applicant came on record.
28. On its side, the Respondent however found that by failing to serve a Notice of Change of Advocates the applicant had violated Order 9 Rules 5 and 6 of the ***Civil Procedure Rules*** and that this was a mischievous act. It further found that it was irregular for the applicant, not to invite the Plaintiff's advocates for the mention before the Chief Magistrate and that it was strange that the Chief Magistrate would proceed ex-parte. In its view, the applicant's conduct amounted to "sharp practice'' as the applicant hid information from the court in order to achieve results favorable to the Defendant hence his conduct was unethical and dishonorable and had caused injustice to the Plaintiff.
29. That the Respondent has jurisdiction to entertain the complaint against advocates cannot be doubted. Under section 57 of the ***Advocates Act***, the Disciplinary Committee [now the Disciplinary Tribunal] (hereinafter referred to as the Committee) is mandated to receive, hear and dispose of complaints brought against an advocate in the manner prescribed under the Act. It is also true that under section 60 of the Act, the said Committee has the power to receive complaints of professional misconduct against an Advocate from any person. I agree that since the Applicant herein is such an Advocate, the Committee has jurisdiction to entertain any complaints made against him in his professional capacity pursuant to section 55 of the Act. This power, as was appreciated by **Mumbi Ngugi, J** in **Ex Parte Kimaiyo Arap Sego, Misc. Appl. No. 1266 of 2007**:

"goes over and above dealing with complaints by individuals. The Committee has the mandate to ensure ethical and professional conduct by members of the Bar and section 60 of the Advocates Act empowers it to deal with complaints regarding professional misconduct, defined to include conduct incompatible with the status of an Advocate…I take the view that the Disciplinary Committee would have failed in its duty if it did not pursue the disciplinary proceedings against the applicant if the evidence before it showed that such conduct was unprofessional and dishonourable."

30. Section 60(1) of the ***Advocates Act*** (Cap.16 Laws of Kenya) provides:

A complaint against an advocate of professional misconduct, which expression includes disgraceful or dishonourable conduct incompatible with the status of an advocate, may be made to the Committee by any person.

31. "Sharp practice", it is my view falls within what can be termed as "***disgraceful or dishonourable conduct incompatible with the status of an advocate".*** The Respondent after considering the versions presented by the parties before it arrived at the decision that the applicant's conduct amounted to "sharp practice''. That decision may or may not have been erroneous. However, the mere fact that a decision is erroneous on its merits does not warrant the grant of judicial review orders. As was appreciated in **East African Railways Corp. vs. Anthony Sefu Dar-Es-Salaam HCCA No. 19 of 1971 [1973] EA 327**:

"It has been recognised for a long time past, that courts are empowered to look into the

question whether the tribunal in question has not stepped outside the field of operation entrusted to it. The court may declare a tribunal's decision a nullity if (i) the tribunal did not follow the procedure laid down by a statute on arriving at a decision; (ii) breach of the principles of natural justice; (iii) if the actions were not done in good faith. Otherwise if none of these errors have been committed, the court cannot substitute its judgement for that of an authority, which has exercised a discretionary power, as the tribunal is entitled to decide a question wrongly as to decide it rightly...And so have the courts repeatedly held that they have an inherent jurisdiction to supervise the working of inferior Courts or tribunals so that they may not act in excess of jurisdiction or without jurisdiction or contrary to law. But this admitted power of the Superior Courts to supervise inferior Courts or tribunals is necessarily delimited and its jurisdiction is to see that the inferior court has not exceeded its own, and for that very reason it is bound not to interfere in what has been done within that jurisdiction, for in so doing it would, itself, in turn transgress the limits within which its own jurisdiction of supervision, not of review, is confined. That supervision goes to two points: one is the area of the inferior jurisdiction and the qualifications and conditions of its exercise; the other is the observance of the law in the course of its exercise...Even if it were alleged that the Commission or authorised officer misconstrued the provision of the law or regulation, that would still not have entitled the court to question the decision reached. If a magistrate or other tribunal has jurisdiction to enter on the enquiry and to decide a particular issue, and there is irregularity in the procedure, he does not destroy his jurisdiction to go wrong. If he has jurisdiction to go right he has jurisdiction to go wrong. Neither an error in fact nor an error in law will destroy his jurisdiction.....Where the proceedings are regular upon their face and the inferior tribunal had jurisdiction, the superior Courts will not grant the order of *certiorari* on the ground that the inferior tribunal misconceived a point of law. When the inferior tribunal has jurisdiction to decide a matter, it cannot (merely because it incidentally misconstrues a statute, or admits illegal evidence, or rejects legal evidence, or convicts without evidence) be deemed to exceed or abuse its jurisdiction."

32. In **Jasbir Singh Rai & 3 Others vs Tarlochan Singh Rai & 4 Others, Civil Application No. 307/2003**, **Omolo JA** stated as follows;

"The courts expressly recognize that they are manned by human beings who are by nature fallible, and that a decision of a court may well be shown to be wrong either on the basis of existing law or on the basis of some newly discovered fact which, had it been available at the time the decision was made, might well have made the decision go the other way."

33. It is therefore my view that the allegations which border on wrong appreciation of the facts and the application of the law to the said facts as found do not merit his Court's intervention.
34. It was contended that the Judgement in Disciplinary Committee Cause Number 66 of 2013 was biased, unlawful and contravened the doctrine of *sub judice* as the Complainant has never prosecuted his claim in **Milimani CMCC No. 3623 of 2012 Boniface Otieno Agoro vs. Martin James Mwalimu & Another.** This Court has had occasion to deal with the issue of the concurrency of proceedings before the Respondent Tribunal and in a civil case and held that the mere fact that a party who has suffered a loss as a result therefor is entitled to invoke the Court's jurisdiction under Order 52 rule 7 of the ***Civil Procedure Rules*** does not bar a complaint being lodged with the Tribunal on the same issue. This was the position adopted in **R vs. The Disciplinary Tribunal of the Law Society of Kenya ex parte John Wacira Wambugu Nairobi JR Misc. Application No. 445 of 2013** where the Court expressed itself as follows:

"In my view the applicant's view that the Respondent's jurisdiction could only arise after the succession cause had been determined is with due respect misconceived. There are complaints which can properly arise during the course of litigation which may properly form the subject of disciplinary proceedings before the Respondent. One such complaint could be the failure to answer correspondences. Such a complaint does not have to await the determination of a particular case before the same can be entertained by the Respondent.

Therefore as long as the Respondent does not purport to usurp the powers reserved for the Succession Court, I do not see how its entertainment of a complaint arising from the manner an advocate is handling a succession cause can be said to fall outside its jurisdiction. In other words the mere fact that a matter is the subject of court proceedings does not ipso facto deprive the Respondent of the jurisdiction to entertain a complaint arising therefrom as long as such a complaint is properly one that it is empowered to entertain."

35. Therefore if the applicant's conduct amounted to a professional misconduct, the mere fact that a civil suit was yet to be determined did not bar the Respondent from entertaining the complaint. Therefore the issues of the Respondent sitting on appeal on a decision of the Court and casting aspersions at the Court do not arise.
36. It was contended that the Respondent contravened the ***Advocates Act*** by sitting as a Committee instead of as a Tribunal under section 57 of the Act. It is trite that if a Tribunal which has no authority purports to exercise the powers of another body, it acts without jurisdiction and therefore its decision would be null and void. However, where there is simply a misnomer in the title of a Commission or Tribunal such misnomer does not deprive the Tribunal of its jurisdiction to entertain and determine a matter before it. The Respondents however contend that the members who sat under the previous Disciplinary Committee in their constitution as a bench are the same members under the Disciplinary Tribunal save for members who may have been replaced with regard to Advocates exercising their legal mandate to elect representatives to the said body hence no prejudice was suffered by the Applicant as the change in name from the Disciplinary Committee to the Disciplinary Tribunal was only but cosmetic in nature.
37. Section 42 of the ***Interpretation and General Provisions Act***, Cap 2 Laws of Kenya provides:

Where a written law confers a power or imposes a duty on the holder of an office as such, then, unless a contrary intention appears, the power may be exercised and the duty shall be performed by the person for the time being holding that office

38. Therefore if the members who heard the disciplinary cause were the same persons who constituted the Tribunal as alleged by the Respondent, this Court cannot interfere with the said decision as the decision is not thereby rendered unlawful.
39. In this case mitigation and sentencing is yet to be undertaken. I agree with the position adopted in **Republic vs. The Disciplinary Committee exp Wambugu [2008] eKLR** and **T O Kopere vs. The Disciplinary Committee Law Society of Kenya & Another HCCCA No. 461 of 2011** that:

"No one, not even the applicant, in my view, has a right to anticipate what the sentence of the Disciplinary Committee, will be, until it is legally pronounced. Indeed to try to stop the Disciplinary Committee from completing carrying out its legal mandate under the relevant law, appears to me to be an illegal exercise which this court in its unfettered discretion, will not be willing to assist the applicant achieve. The stay sought if granted, will without doubt assist the applicant in preventing a lawfully constituted tribunal from carrying out its lawful mandate."

Order

40. In the result I find no merit in the Notice of Motion dated 14th July, 2015. The same fails and is hereby dismissed with costs to the Respondent and the Interested Parties.

Dated at Nairobi this 29th February, 2016

G V ODUNGA

JUDGE

Delivered in the presence of:

Mr Wanga fo Mr Olembo for the Respondent

Cc Mwangi