



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 12 OF 2012

MACHARIA WAIGURU..... PLAINTIFF

V E R S U S

THE ATTORNEY GENERAL..... 1ST DEFENDANT

THE CHIEF COURT REGISTRAR..... 2ND DEFENDANT

THE KENYA POSTAL CO-OPERATION LTD.....3RD DEFENDANT

THE SECRETARY LAW SOCIETY OF KENYA..... 4TH DEFENDANT

JUDGEMENT

1. Macharia Waiguru, the plaintiff herein, sued The Attorney General, The Chief Court Registrar, The Kenya Postal Co-operation Ltd, The Secretary Law Society of Kenya, the 1st, 2nd, 3rd and 4th defendants respectively vide the plaint dated 19.2.2012 whereof he sought for judgement in the following terms:
 - a. ***General damages for the acts complained in the plaint.***
 - b. ***A declaration that the plaintiff is entitled to a practicing certificate for the year 2011, 2012 and thereafter.***
 - c. ***Costs of this suit.***
 - d. ***Any other relief.***
2. The 1st and 2nd defendants filed their defences and denied the plaintiff's claim while the 3rd and 4th defendants did not. On 15th day of March 2016, the plaintiff appeared before Hon. Makungu, the Deputy Registrar of this court and successfully applied to withdraw the suit against the 1st, 2nd and 3rd defendants. He however maintained that he was prosecuting the suit only as against the Law Society of Kenya, the 4th defendant herein.
3. The Deputy Registrar of this court entered judgment against the 3rd and 4th defendants in default of appearance and defence on 11th April 2012. This suit therefore came for formal proof hearing before this court on 31.3.2016. On the aforesaid date the plaintiff relied on affidavit evidence he swore on 16th February 2016 pursuant to the provisions of order 11 rules 6 and 7 of the Civil Procedure Rules. Though the plaintiff had sought for an award of damages for malice by the 4th defendant, the plaintiff informed this court that he was no longer interested to pursue the same. He stated that he was only pursuing the order for declaration that he is entitled to be issued with a

practising certificate.

4. I have considered the affidavit evidence plus the written submissions. Mr. Macharia Waiguru deponed in his affidavit that under Section 22 (1) of the Advocates Act, an application for a practising certificate shall be made to the registrar by delivering an application in duplicate and by producing evidence satisfactory to the registrar that the applicant has paid to the Law Society of Kenya the fee prescribed for a certificate. The plaintiff further deponed that under Section 22 (2) of the Advocates Act, if the registrar is satisfied that the applicant's name is on the roll of advocates and he is not suspended, he shall within 14 days issue a certificate. In the aforesaid affidavit the plaintiff did not deem it fit to annex relevant evidence to show he complied with the aforesaid provisions. He merely filed photocopies of a certificate of posting of registered article and a declaration to accompany application for practising certificate. He also filed a letter dated 17.2.2012 from the Law Society addressed to him. In the aforesaid letter, the secretary of the Law Society of Kenya informed the plaintiff of the reason why the Law Society was returning the plaintiff's cheque for kssh.18,860/=. He was informed that the amount required was less by ksh.200/= and that the cheque was not accompanied by the necessary application forms for a practising certificate. The plaintiff was further informed that the cheque was wrongly drawn in the name of the secretary Law Society of Kenya instead of the Law Society of Kenya.
5. The letter is quite explicit in that the plaintiff was requested to comply with the aforesaid terms to enable the Law society of Kenya to process the plaintiff's practising certificate.
6. In the affidavit evidence the plaintiff did not explain detail in that he complied with the aforesaid requirements. Instead of the plaintiff outlining in his affidavit that he complied with the required conditions he instead brought out the same in his submissions. It should be made clear that submissions cannot by any stretch of imagination substitute evidence whether the evidence is viva voce or by affidavit. The written submissions filed are of no evidential value.
7. This court has been asked to declare that the plaintiff is entitled to a practising certificate for the years 2011, 2012 and thereafter. On the basis of the plaintiff's affidavit evidence presented to this court, I am unable to grant him judgement to that effect because the affidavit evidence he presented is not sufficient to establish the claim to the required standard in civil cases. For this reason, the suit is dismissed with no order as to costs.

Dated, Signed and Delivered in open court this 22nd day of April, 2016

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant