



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL CASE NO. 238 OF 2015**

**HON. DR. EVANS KIDERO .....PLAINTIFF**

**VERSUS**

**HON. DR. BONNY KHALWALE.....DEFENDANT**

**RULING**

1) Bryan Otumba Yongo, hereinafter referred to as the ‘**Applicant**’ took out the motion dated 31.8.2015 in which he sought for inter alia:

***A. THAT this application be certified urgent and be heard ex parte in the first instance during the court vacation.***

***B. THAT BRYAN YONGO OTUMA be enjoined herein as an interested party and he application herein be heard and determined prior to any other application and or proceedings in this matter.***

***C. THAT AHMEDNASIR ABDULLAHI ADVOCATE and or trading as AHMEDNASSIR ABDIKADIR & CO. Advocates is not qualified to act as an advocate and be sanctioned as appropriate under section 56 of the Advocates Act.***

***D. THAT pleadings, documents, notices and affidavits drawn and filed by AHMEDNASIR ABDULLAHI ADVOCATE and or trading as AHMEDNASIR ABDIKADIR & CO. Advocates be declared a nullity and be and are hereby struck out and expunged from the court record.***

2) The Applicant swore an affidavit he filed in support of the motion. When served, Ahmed Nassir hereinafter referred to as the ‘**Respondent**’ filed grounds of opposition to resist the motion.

3) When the motion came up for inter partes hearing the Respondent’s advocate raised a preliminary point of law which is to the effect that the motion is resjudicata. Mr. Cohen, learned advocate for the Respondent pointed out that the Applicant had filed an amended originating summons dated 19<sup>th</sup> August 2013 in which he raised similar issues to those raised in the current motion. The learned advocate further argued that the originating summons was heard and dismissed on 21.11.2014. Mr. Cohen also indicated that there is another petition raising similar issues which is still pending before the High Court.

4) The Applicant strenuously opposed the preliminary objection and urged this court to dismiss it. Mr. Yongo admitted that he actually filed the originating summons dated 19<sup>th</sup> August 2013. He also admitted that the aforesaid originating summons was dismissed on 21.11.2014. He however argued that the summons was dismissed on a technicality hence the doctrine of resjudicata does not apply.

5) I have carefully considered the rival oral submissions presented by the parties over the motion. The ruling of Lady Justice Ogo delivered on 21.11.2014 vide Nairobi H.C.C.C. no 310 of 2013 (O.S) was presented to this court to show that the Applicant had raised similar issues. It is apparent from the ruling of Lady Justice Ogo that the Applicant had filed an amended originating summons dated 19.08.2013 in which he sought the following orders against the Respondents and 5 others:

***i. That this court be pleased to declare the certificate of completion of pupillage dated 26<sup>th</sup> November 1992, upon which Ahmed Nassir Abdullahi petitioned for admission as an advocate is a nullity and void ab ignition having been issued by an unqualified person.***

***ii. That the said Ahmed Nassir Abdullahi be struck off the Roll of Advocates having beached Part IV of the Advocates Act specifically Section 13 (a) (b).***

***iii. That this court be pleased to declare the certificate of completion dated 26<sup>th</sup> November 1992 upon which Ahmed Nassir Abdullahi obtained admission a forgery, null and void ab ignition and to strike out the same from the record of application for admission for the reason that he never attended pupillage nor was he issued with a certificate of completion of pupillage as required by part IV, Section 13 (ii) b(i) of the Advocates act, Cap 16 Laws of Kenya.***

***iv. That this court be pleased to declare and direct that all pleadings in matters pending before any and all courts and tribunals and all documents signed and executed by Ahmed Nassir Abdullahi purporting to act in his capacity as an advocate reconizable under the Advocates Act in his capacity as an advocate recognizable under the Advocates Act cap 16 of the laws of Kenya be expunged and/or struck out.***

***v. That it be declared that Ahmed Nassir Abdullahi & Associates registered is in breach of section 32 of the Advocates Act Cap 16 and is illegal null and void.***

***vi. That this court be pleased to declare that Ahmed Nassir Abdullahi is not a qualified person to retain the title of Senior Counsel within the meaning of the Advocates Act.***

***vii. That appropriate disciplinary actions be meted against Ahmed Nassir Abdullahi.***

***viii. That all pleadings, applications, judgements and any other documents drawn and filed by Mr. Ahmed Nassir Abdullahi purportedly as an advocate be expunged, set aside and declared null and void.***

6) prayers (B), (C) and (D) of the current motion are similar to prayers (vi), (viii) and (iv) above respectively. Lady Justice Ogo struck out the applicant's amended originating summons on the basis that the same was time-barred under Section 70 of the Advocates Act.

7) According to the applicant, the decision of Lady Justice Ogo should not used to make the current motion to be resjudicata because the judge did not consider the merits of the amended originating summons.

8) There is no doubt that the amended originating summons was found to be statutorily-barred. It cannot be argued that the action was dismissed on a technicality. The question of the competency of an action goes to the root of the suit and is equivalent to the court having heard and determined a suit on its merits.

9) The Applicant did not indicate whether or not he has preferred an appeal against the decision of Lady Justice Ogo. For now I will presume that he has not preferred any appeal, if he has filed one, still he is not out of the woods because the effect is that the motion now before this court cannot proceed for hearing because it will be stayed for being res-subjudice. The issues raised in the both matters are similar and involving the same parties.

10) In the end, I find the preliminary objection to be well founded. Consequently, the motion dated

31.8.2015 is found to be resjudicata. The same is ordered dismissed with costs to the Respondent.

Dated and delivered in open court this 13<sup>th</sup> day of November, 2015.

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Plaintiff

.....for the Defendant