



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION, CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

MISCELLANEOUS CIVIL APPLICATION NO. 379 OF 2014

IN THE MATTER OF ORDERS 53 RULE 3 OF THE CIVIL PROCEDURE ACT

AND

IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

REPUBLIC.....APPLICANT

VERSUS

THE LAW SOCIETY OF KENYARESPONDENT

AND

GEOFFREY GATHARA MAHINDA.....INTERESTED PARTY

RULING

1. By a Notice of Motion dated 12th November, 2015, the *ex parte* applicant herein, **Arthur Wamiti Njoroge**, substantially seeks an order of certiorari to remove to this Court for the purposes of being quashed an alleged decision of the respondent contained in the judgement dated 12th May, 2014.
2. The Respondent has however raised an objection that the decision being challenged was not made by the Respondent but by the Disciplinary Tribunal.
3. According to **Mr Olemba** learned counsel for the Respondent, the applicant has sued the Law Society of Kenya while the decision sought to be quashed was made by the Disciplinary Tribunal. The Law Society, it was submitted is established under section 3 of the **Law Society of Kenya Act**, Cap 18 Laws of Kenya while the Disciplinary Tribunal is established under section 57 of the **Advocates Act**, Cap 16 Laws of Kenya. It was therefore submitted that the Tribunal ought to have been the right party to be sued hence the suit as filed, cannot succeed as the orders sought are incapable of being granted.
4. On his part, Mr Mahinda learned counsel for the interested party associated himself with the submissions of **Mr Olemba** and reiterated the aforesaid submissions.
5. **Mr Maosa** who was holding brief for **Mr Kibanga**, learned counsel for the applicant however informed the Court that he was not in a position to respond to the submissions and left the Court to the Court.
6. I have considered the submissions herein. Order 53 rule 7(1) of the **Civil Procedure Rules** provides:

In the case of an application for an order of certiorari to remove any proceedings for the purpose of their being quashed, the applicant shall not question the validity of any order, warrant, commitment, conviction, inquisition or record, unless before the hearing of the motion he has lodged a copy thereof verified by affidavit with the registrar, or accounts for his failure to do so to the satisfaction of the High Court.

7. The decision sought to be quashed in these proceedings is, going by the documents exhibited in to the verifying affidavit, the decision made on 18th August 2014 in the Disciplinary Committee Cause No. 143 of 2013. The Disciplinary Committee is established under section 57 of the ***Advocates Act***, Cap 16 Laws of Kenya which also sets out its composition which include six advocates, other than the chairman, vice-chairman or secretary of the Respondent Society. That the Tribunal is a quasi-judicial Tribunal is not in doubt. Accordingly, its decisions are amenable to the supervisory jurisdiction under Article 165(6) of the Constitution.
8. The Respondent Society is however established under section 3 of the ***Law Society of Kenya Act***, Cap 18 Laws of Kenya and has the capacity to sue and be sued.
9. From the foregoing provisions it is clear that the Law Society of Kenya, the Respondent herein and the Disciplinary Committee or Tribunal are two distinct legal entities and one cannot be substituted one for the other. It is clear that the decision being challenged in these proceedings was made by the Disciplinary Tribunal or Committee. That Tribunal is not a party in these proceedings. No leave was sought and obtained to impugn its decision.
10. In the premises I find that as the body whose decision is being challenged is not the respondent in these proceedings, the orders sought herein are incapable of being granted.
11. Accordingly, these proceedings are incompetent. In the result, the Motion dated 12th November, 2014 is struck out with costs to the Respondent and the interested party.

Dated at Nairobi this 10th day of December, 2015

G V ODUNGA

JUDGE

Delivered in the presence of:

Mr Gitonga for Mr Kibanga for the Applicant

Mr Lagat for Mr Olembo for the Respondent

Miss Sumba for Mr Mahinda for the Interested Party

Cc Mutisya