



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**HCC 34 OF 2012**

JOHNES AKELO OMBOTO & ANOTHER.....PLAINTIFF

VERSUS

TELCOM KENYA LIMITED.....DEFENDANT

**RULING**

1. The suit herein was filed on 27/2/2012 by the two plaintiffs – **JOHNES AKELO OMBOTO** and **GRADUS OMBOTO AKELO** (a minor who sued through next friend **JOHNES AKELO OMBOTO**) – against the defendant – **TELKOM KENYA LIMITED**. Along the way however, the parties had a meeting of minds on the issue they were tussling over and it became unnecessary to proceed with the suit.
2. The present application was then filed on 24/1/2013 specifically to mark the suit compromised and to order the defendant to pay costs. Costs are asked for against the defendant because the defendant is said to have needlessly subjected the plaintiffs to unnecessary litigation.
3. The defendant opposes the application precisely on the ground that at the time the suit was filed, the counsel who did so – **ERIC OTIENO OJURA** – did not have a practicing certificate and could not therefore represent the plaintiffs. He lacked authority to take instructions, draw or prepare any documents.
4. The plaintiffs counsel then swore a supplementary affidavit explaining that his practicing certificate for 2012 was paid for on 9/1/2012 and he received a receipt for that payment. The receipt was dated 31/1/2012 and bore number 0030930.
5. But a mistake occurred, counsel deponed, and the Registrar, High court, issued him with a practicing certificate dated 22/3/2013. This elicited a protest from him and he protested to the Law society of Kenya vide a letter dated 29/3/2013. The counsel says further that he has taken up the matter with the Law Society of Kenya and the issue is still under consideration.
6. This application is one for determination on the basis of written submissions. The plaintiff/Applicant's submissions were filed on 9/10/2013 and are dated 8/10/2013. It was submitted, inter alia, that the plaintiff's counsel had already paid for his practicing Certificate as at 9/1/2012. He was subsequently issued with receipt no.0030930 dated 31/1/2012. The plaintiff's advocate practicing Certificate therefore should have covered 1st January, 2012. That being the case, the counsel should be deemed to have been properly practicing and the plaintiffs should recover their costs.
7. The defendant/Respondents submissions were filed on 30/9/2013. The arguments against costs stated earlier in this ruling were repeated.

In addition, two decided authorities were availed to buttress the arguments. They are:

(i) **KENYA POWER & LIGHTING COMPANY VS CHRIS MAHINDA: C.A.NO.148/2004**

ii. **NATIONAL BANK OF KENYA VS NDOLO AYAH: CA NO.119/2002**

8. I have this to SAY:

These two authorities make a clear stand that a practicing certificate takes effect from the time it is issued. The fact to consider is not when it was paid for; it is when it was issued. The case of Kenya Power & Lighting (supra) has particular similarities with this one. Like in this one, the practicing certificate had been paid for earlier and there was an argument, just like here, that it should have a retrospective effect. That argument was rejected by the Court.

9. Section 24(1) of the Advocates Act (Cap 16) states as follows:

**“Every practicing Certificate shall bear the date of the day on which it is issued and, shall have effect from the beginning of that day”.**

This is the same position espoused by the two authorities cited by the defendant. It is not in dispute that the plaintiff's counsel practicing certificate is dated 22/3/2013. It is plain, that the plaintiff's counsel didn't have practicing certificate on 27/2/2012 when the suit was filed. The law as it stands is against him. Judicial pronouncements emanating from the Courts do not back his arguments. It is easy therefore to see that the application herein must fail.

10. In light of all this, the application is found unmeritorious and is hereby dismissed with costs.

**A.K. KANIARU – JUDGE**

**18/3/2014**

**18/3/2014**

Before A.K. Kaniaru – Judge

Diang'a George – C/C

No party present

**Interpretation:** English/Kiswahili

M/s Odhiambo for Yogo for Plaintiff/Applicant

Sichaga (absent) for respondent/Defendant

**COURT:** Ruling on application filed on 24/1/2013 read and delivered in open **COURT**.

Right of Appeal – 30 days.

**A.K. KANIARU – JUDGE**

**18/3/2014**

