IN THE HIGH COURT OF KENYA AT NAIROBI

JR MISC. CIVIL APPLICATION NO. 303 OF 2009

IN THE MATTER OF THE ADVOCATES ACT, CAP 16 LAWS OF KENYA

AND

IN THE MATTER OF AN APPLICATION FOR ORDERS OF CERTIORARI, PROHIBITION AND MANDAMUS

REPUBLIC ……..……..APPLICANT

VERSUS

THE DISCIPLINARY COMMITTEE ……..…… RESPONDENT

EX-PARTE: **KARIMI C. NJAU**

JUDGEMENT

Introduction

1. By a Notice of Motion dated 3rd June, 2009, the *ex parte* applicant herein, **Karimi C. Njau** seeks the following orders:

a. **THAT an order of Certiorari do issue to remove into the High Court and quash the decision of the Respondent dated 24th November 2008 convicting the Applicant for failing to respond to correspondence from complaints commission dated 22nd November 2007 and 5th February 2008.**
b. **THAT an order of Prohibition do issue against the Respondent from proceeding with execution proceeding against the Applicant on the basis of its judgment and or decision dated 24th November, 2008 and/or forwarding their recommendations to the Chief Justice of the Republic of Kenya.**
c. **THAT an order of Mandamus do issue compelling the Respondent to rescind its decision/orders dated 24th November 2008, sentencing the Applicant to a fine for failing to respond to the letters from the Complaints Commission.**
d. **THAT the costs of this application be borne by the Respondent.**

Ex Parte Applicant's Case

2. The application supported by a Supporting Affidavit sworn by the Applicant on 15th May, 2009.
3. According to the Applicant, she is the Respondent in D.C.C 101 of 2008 in complaint filed by **Duncan Orina Nddemo**, **Patrick Kinyua Wanjau**, **Eddy Nderitu Karigi**, **Ephantus Mawira Mugo**, **Ephantus Muguro Njoroge** who are the Plaintiff in Nairobi CMCC No. 13256 of 2006 and 2609 of 2007 respectively (hereinafter referred to as the Complainants) and are therefore her clients.
4. She deposed that she received instruction from the complainants on 17th May 2006 to file their accident claim and he promptly filed Nairobi CMCC Nos. CMCC No. 13256 of 2006 and 2609 of 2007 on 24th November 2006 and 28th March 2007 respectively. However, on 9th June 2008 she received a letter from the Complaints Commission dated 5th February 2008 in which there was another letter enclosed dated 27th November 2006 raising a complaint that she had delayed to file the complainants' case which cases were already in court. According to her, on 27th June 2008 she replied to the commission through a letter which was served upon their offices on 1st July 2008.
5. Despite that the Advocates' Complaints Commission filed complaint against her on 22nd July 2008 at the Disciplinary Committee vide DCC No. 101 of 2008 to which she replied on 27th June 2008. Thereafter she never heard from the Complaints commission and it was only on the 21st May 2009 that in following up on the issue of renewal of his practicing certificate for the year 2009, that she first discovered that there were orders made on the 24th November 2008 to the effect that the Respondent had convicted her for failing to reply to the complaint's commission correspondence. Thereafter she requested for and was supplied with the documents and proceedings of DCC No. 101 of 2008.
6. The Applicant reiterated that between 27th June 2008 and the 21st May 2009 she had not seen or received any correspondence, Hearing Notice and/or been served personally with any hearing notice whatsoever, notifying her of the hearing date or of dates for DCC 101 of 2008 hence was totally unaware of the hearing of DCC 101 of 2008 or any the orders made therein on the 24th November 2008. According to him the letters from the complainants which she saw in the file and which were allegedly sent to her requesting for their files were never received by her.
7. The Applicant therefore contended that DCC 101 of 2008 was heard *ex-parte* on a date unknown to him at from the documents that were provided to him at the Law Society of Kenya Offices on the 21st May 2009, she learnt that the Disciplinary Committee had on the 24th November 2008 made the following adverse orders/sentence against her, to wit:

   You are Acquitted on count 1 and 2 and Convicted on the 3rd count.

   1. To pay the fine of Ksh 10,000/= and costs of Kshs 10,000/= to LSK within 30 days of the date of the order in default execution to issue.

8. The Applicant further averred that the Respondent proceeded to hear DCC 101 2008 in his absence, and he was not availed an opportunity to be heard, and since he had not yet been furnished with a copy of the proceedings and ruling he did not know what exactly transpired at the hearing, or even when the disciplinary cause was heard.
9. In the Applicant's view, the failure to notify and/or serve him personally with a hearing notice of the DCC 101 of 2008 by the Respondent herein resulted in his being condemned unheard which is totally unfair, prejudicial, against natural justice, Law and equity, that no party should be condemned unheard, particularly on a matter and issue as serious as DCC 101 of 2008, particularly on his being accused of, convicted and sentenced for offence he never committed.
10. Vide a supplementary affidavit sworn by the applicant on 31st August, 2010, it was averred while reiterating the position in the supporting affidavit that contrary to the Respondent's assertion, the applicant did reply to the Complainants Commission vide his letter dated 27th June 2008 which was received at the commission's office on 1st July 2008 as confirmed by exhibit No. KCN 2 annexed to his verifying affidavit sworn on 21st May 2009 hence at the time he lodged the

complaint to the Respondent, on 22nd July 2008 **Mr. Joseph Nguthiru Kingarui** the Commissioner with the Complaint's Commission acted maliciously against her by charging her with the offence of failing to reply to the Complaints Commission correspondences without disclosing that she had actually replied through her letter referred to above which had been received by the commission 21 days before the complaint was lodged. Similarly, the Respondent also acted maliciously against the applicant by relying on the evidence of **Mr. Kingarui** which was one sided after conveniently suppressing evidence to the effect that she had replied to the commission.

11. The Applicant deposed that on 19th March, 2008, she notified the Respondent and the law Society of Kenya about the change of address through the declaration she swore when applying for the practicing certificate which clearly indicated that her new address was P.O. Box 22998-00100 Nairobi which was the address she indicated on letter to the Complaint's Commission dated 27th June 2008 annexed to my verifying affidavit sworn on 21st May 2009 and received a letter from the Law Society of Kenya in the month of July 2008 through her current address. She deposed that she stopped using the address P.O. Box 50712-00200 Nairobi way before the proceedings in D.C.C. 101/2008 were commenced and the Respondent was aware of the change of address as it is clear that from the exhibit No. A-M 4 annexed to the replying affidavit of **Apollo Mboya** that the claim was lodged with the Respondent on 22nd July 2008 at 12 p.m. and not 14th July 2008 as stated by the deponent of paragraph 8 of the said replying affidavit therefore making the averments in the replying affidavit untrue.
12. The Applicant reiterated that she was never served with the plea notice, the hearing notice, the judgment, mitigation and sentence notice as the letters annexed as AM-5, 6 and 7 addressed to P.O. Box 50712-00100 which was not her address as the time they were sent and in any case there is no indication from the annexed affidavits of service and proceedings that the said affidavits were ever filed with the Respondent before the hearing of the Complaint by the Respondent and there was no evidence that the members of the Respondent committee had read the affidavit of service and convinced that she had actually served with the said documents leading to an irresistible conclusion that they did not have the affidavits of service before them while proceeding for plea, hearing. Judgment, mitigation and sentence.
13. The Applicant further added that it is true the hearing notice was dated 16th September 2008 while the hearing had been set for 6th October 2008 a period of 20 days which period is less than the mandatory 21 days period provided for under the provisions of **Section 60(3)** of the **Advocates Act** and **Rule 13** of the **Advocates (Disciplinary Committee) Rules**. It was therefore averred that the Respondent acted without jurisdiction in relying on and affidavit of service which was out rightly defective and false.

<u>Respondents' Case</u>

14. In response to the Application, the Respondents filed a replying affidavit sworn by **Apollo Mboya**, the Respondent's Secretary on 14th April, 2010.
15. According to him, 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 Respondent to receive, hear and determine complaints lodged against advocates such as the Applicant herein. He further deposed that the Respondent herein is established under Section 57 of the ***Advocates Act*** (Chapter 16 of the Laws of Kenya) for purposes, *inter alia,* of dealing with professional misconduct on the part of advocates. Further, under Section 60 of the ***Advocates Act*** the Respondent herein is empowered to receive complaint by any person as against an advocate for professional misconduct.
16. Pursuant to the provisions of the ***Advocates Act*** a complaint was received by the Complainants Commission on 27th November 2007 from the Complaints against the Applicant herein, on the grounds that she was instructed by the Complainants to take up a running down matter on their behalf, but had failed and/or neglected to do anything on the matter for a period of two (2) years despite having received the original documents relating to the matter from the Complainants. Subsequently, the Complaints Commission wrote to and communicated the particulars of the

complainant to the Applicant herein vide its letters dated 27th November 2007 and 5th February 2008 which letters however did not yield any reply from Applicant and the Complaints Commission consequently lodged a complaint under the ***Advocates Act*** against the said advocate with the Disciplinary Committee, the Respondents herein, on 14th July 2008 on three charges namely:

> **(a) Withholding the Complainants' documents for a period of two years without filing the necessary suit and exposing the Complainants to the risk of having their suit being statutory barred.**
>
> **(b) Refusing to release the said original documents or proceeding to file the suit before the expiry of the statutory period.**
>
> **(c) Failing to reply to correspondence from the Complaints Commission.**

17. According to the deponent, the Advocates Disciplinary Committee proceeded to fix the cause for plea taking on 11th September 2008 as DCC/101/2008 and duly served the Applicant vide registered post with the letter notifying her of the date fixed for plea taking at her last known address which letter was never returned to the Respondent as unclaimed. On the day of plea taking, there was no appearance by the Applicant and the said committee ordered that the Applicant advocate was required to file a Replying Affidavit within 21 days and the matter was set down hearing on 6th October 2008. Accordingly, the Hearing Notice dated 16th September 2008 was duly sent to the Applicant's last known address vide registered post but the same was never returned as unclaimed. Accordingly, on 6th October 2008, the Disciplinary Committee proceeded with hearing of the complaint *ex-parte* as the accused advocate did not appear and was not represented, and fixed 17th November 2008 as the day of Judgment/Mitigation and Sentence. Once again on 31st October 2008, vide registered post, the notice of the day for judgment/mitigation and sentence was duly sent to the said advocate's last known address as per the records of the Law Society of Kenya which notice was never returned as unclaimed.
18. However, on the said day, 17th November 2008 the judgment was not ready and the matter was adjourned to 24th November 2008 on which day the same was delivered and the Applicant was acquitted on the 1st and 2nd counts and convicted on the 3rd count and sentenced to pay a fine of Kshs. 10,000/= and costs of Kshs. 10,000/= to the Law society of Kenya within 30 days of the date of the order and execution to issue in the event of default and the matter was again scheduled for mention on 16th February 2009 to confirm compliance. The Notice of mention was accordingly sent to the said advocate's last known address on 2nd December 2008, vide registered post. However, when the matter was mentioned on 16th February 2009, there was still no compliance with the orders given on 24th November 2008.
19. The deponent therefore contended that the Applicant's claim that she was not aware of the Complaint and the charges lodges against her is an attempt to mislead this Honourable Court as she was duly served with the letters informing him of the complaint and of the charges preferred against her and with all the hearing notices at her last known address. According to him, under Rule 27 of the ***Advocates (Disciplinary Committee) Rules***, service of any notice or document may be effected by registered post addressed to the last known postal address of the person served, and such service shall be deemed to have been effected 72 hours after posting. It was therefore the Respondent's position that the Applicant's allegation that she was not accorded an opportunity to be heard is false and intended to mislead this Honourable Court as the Applicant was given due notice, duly served and accorded a chance to respond to and attend the hearing in respect of D.C.C No. 101 of 2008. The Applicant however opted to ignore the said notices and not attend the hearings, and as such the allegation that the Respondent breached the rules of Natural Justice is not true and the Applicant is not entitled to the remedy of judicial review as sought herein.
20. To the Respondent, the Applicant's application for the Judicial Review orders is misconstrued, bad in law and an abuse of this Honourable court as the proceedings in D.C.C. No. 101 of 2008 were conducted by the Respondent pursuant to the duties imposed on it by statute and in

accordance with the statutory procedures provided and in adherence to the rules of natural justice. The Respondent's position was therefore that the Applicant has not set down sufficient grounds upon which an order for Judicial Review can be granted and the same should be dismissed with costs to allow the Respondent proceed with the execution proceedings to enforce the orders made on 26th November 2008.

Applicant's Submissions

21. On behalf of the Applicant, it was submitted while reiterating the averments in the supporting affidavits that whereas the Applicant was found guilty of failing to respond to correspondence from the Commission the Applicant actually did reply to the said communication.
22. It was submitted that the failure to personally serve the Applicant resulted into her being condemned unheard. In support of her submissions the Applicant relied on **Jafferson M S Nyagesoa vs. The Chairman of the Disciplinary Committee and Another Kisii HCMA No. 189 of 2004**, **George Philip M Wekulo vs. The Law Society of Kenya and Attorney General Kakamega HCMA No. 29 of 2005** and **Republic vs. The Staff Disciplinary Committee of Maseno and 2 Others Kisumu HCMA Appl. No. 227 of 2003**.

Respondent's Submissions

23. While spelling out the mandate of the Respondent and the steps taken in the proceedings, it was submitted that the Applicant was given adequate notice to inspect the documents and respond thereto.
24. According to the Respondent Rule 27 of the ***Advocates (Disciplinary Committee) Rules***, providers that service may be effected by registered post addressed to the last known postal address of the person served and that such service shall be deemed to have been effected 72 hours after posting.
25. Based on the annextures, it was submitted that the Applicant was duly served with all the hearing notices hence her contentions of non-service are intended to mislead the Court. The Court was invited to take note of the fact that the Applicant admitted receipt of the letter dated 5th February, 2008 from the Complaints Commission through the same address that the Respondent used.
26. According to the Respondent the Respondent is entitled to rely on affidavit evidence under Rule 18 hence viva voce evidence is not mandatory.
27. According to the Respondent the punishment that was meted to the Applicant was lawful and within the jurisdiction of the Respondent and since the Respondent was exercising statutory duty the order of certiorari ought not to issue.

Determinations

28. I have considered the application, the evidence adduced in the form of affidavits and the submissions filed on behalf of the parties herein.
29. In my view the determination of this matter revolves around the issue whether or not the Applicant was served with the hearing notices before the impugned decision was made The applicant contends that she was never served and was not aware of the proceedings in question though she had a good defence as the claim against her was untrue. In **Onyango Oloo vs. Attorney General [1986-1989] EA 456,** it was held:

"The principle of natural justice applies where ordinary people would reasonably expect those making decisions which will affect others to act fairly and they cannot act fairly and be seen to have acted fairly without giving an opportunity to be heard...There is a presumption in the interpretation of statutes that rules of natural justice will apply and therefore the authority is required to act fairly and so to apply the principle of natural justice...To "consider" is to look at attentively or carefully, to think or deliberate on, to take into account, to attend to, to regard as, to think, hold the opinion... "Consider" implies looking at the whole matter before reaching a conclusion...A decision in breach of the rules of natural justice is not cured by holding that the decision would otherwise have been right since if the

principle of natural justice is violated, it matters not that the same decision would have been arrived at...It is improper and not fair that an executive authority who is by law required to consider, to think of all the events before making a decision which immediately results in substantial loss of liberty leaves the appellant and others guessing about what matters could have persuaded him to decide in the manner he decided...In the course of decision making, the rules of natural justice may require an inquiry, with the person accused or to be punished, present, and able to understand the charge or accusation against him, and able to give his defence. In other cases it is sufficient if there is an investigation by responsible officers, the conclusions of which are sent to the decision-making body or person, who, having given the person affected a chance to put his side of the matter, and offer whatever mitigation he considers fit to put forward, may take the decision in the absence of the person affected. The extent to which the rules apply depends on the particular nature of the proceedings...It is not to be implied that the rules of natural justice are excluded unless Parliament expressly so provides and that involves following the rules of natural justice to the degree indicated...Courts are not to abdicate jurisdiction merely because the proceedings are of an administrative nature or of an internal disciplinary character. It is a loan, which the Courts in Kenya would do well to follow, in carrying out their tasks of balancing the interests of the executive and the citizen. It is to everyone's advantage if the executive exercises its discretion in a manner, which is fair to both sides, and is seen to be fair...Denial of the right to be heard renders any decision made null and void ab initio."

30. Article 47(1) and (2) of the Constitution provides as follows:

(1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

(2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.

31. In my view fair administrative action imports the rules of natural justice. To fail to adhere to the rules of natural justice may render an administrative action procedurally improper and procedural impropriety is no doubt one of the grounds for grant of judicial review remedies. In **Pastoli vs. Kabale District Local Government Council and Others [2008] 2 EA 300,** the Court while 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** held:

"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.....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."

32. The Respondents have however contended that the various notices were sent to the applicant by registered post to the last known address of the applicant pursuant to Rule 27 of the ***Advocates (Disciplinary Committee) Rules.*** The said rule provides as follows:

Service of any notice or document may be effected under these Rules by any method authorized

by law or by registered post, addressed to the last known postal address or abode in Kenya of the person to be served, and such service shall be deemed to have been effected seventy-two hours after posting.

33. From the documents exhibited by the Respondent it is clear that the documents were sent by either registered post or certificate of posting. Therefore if the same were sent to the last known address of the applicant the issue of service would not arise. The Applicant however contends that in her declaration to accompany application for practicing certificate for the year 2008 which was received by the Respondent on 19th March, 2008, she indicated her address as P. O. Box 22998-00100, Nairobi and not P. O. Box 50712-00200, Nairobi where the Respondents addressed the notices. Section 3(5) of the ***Interpretation and General Provisions Act***, Cap 2 Laws of Kenya provides:

Where any written law authorizes or requires a document to be served by post, whether the expression "serve" or "give" or "send" or any other expression is used, then, unless a contrary intention appears, the service shall be deemed to be effected by properly addressing to the last known postal address of the person to be served, prepaying and posting, by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of the post.

34. To prove that her last known address was P. O. Box 22998-00100, Nairobi, the applicant exhibited to the supplementary affidavit an envelope of a letter sent by the Respondent to the applicant in the month of July 2008 indicating the applicant's address as P. O. Box 22998-00100, Nairobi.
35. Based on the material on record I am satisfied that the Applicant has proved on balance of probability that her last known address was in fact P. O. Box 22998-00100, Nairobi and not P. O. Box 50712-00200, Nairobi to which the Respondent dispatched its notices and correspondences.
36. The Respondent contends that being a statutory body, the Court cannot quash its decision. However as was held in **Republic vs. Institute of Certified Public Accountants of Kenya Ex Parte Vipichandra Bhatt T/A J V Bhatt & Company Nairobi HCMA No. 285 of 2006**:

"The Disciplinary Committee as a statutory body can only do that which it is expressly or by necessary implication authorised to do by statute…Secondly, the Disciplinary Committee has no authority to expand its ambit beyond what has been referred to it by the Council... If a tribunal whose jurisdiction was limited by statute or subsidiary legislation mistook the law applicable to the facts as it had found then it must have asked itself the wrong question, i.e. one into which it was not empowered to inquire and so had no jurisdiction to determine. Its purported determination not being a 'determination' within the meaning of empowering legislation was accordingly a nullity…Error of law by a public body is a good ground for judicial review. An administrative or executive authority entrusted with the exercise of a discretion must direct itself properly in law…It is axiomatic that that statutory power can only be exercised validly if they are exercised reasonably. No statute can ever allow anyone on whom it confers a power to exercise such power arbitrarily and capriciously or in bad faith."

37. As was held in **Jafferson M S Nyagesoa vs. The Chairman of the Disciplinary Committee and Another** (supra):

"The committee is a public body established under the Advocates Act. It has a duty to observe rules of natural justice. Indeed rule 17 of the *Advocates (Disciplinary Committee) Rules* empowers the committee to proceed ex parte if a party fails to appear but this is only when such a party has been given Notice of the hearing date. Otherwise if a party is not served he cannot be accused of failing to appear for he cannot appear unless he is aware of the hearing. There is no evidence that the ex parte applicant was served and as such by proceeding in his absence the respondent denied him his right to be heard. The sentence passed on 10th September, 2004 cannot stand."

38. In **Republic vs. The Honourable The Chief Justice of Kenya & Others Ex Parte Moijo Mataiya Ole Keiwua Nairobi HCMCA No. 1298 of 2004**, the Court expressed itself as follows:

"Whereas the rules of natural justice are not engraved on tablets of stones, fairness demand that when a body has to make a decision which would affect a right of an individual it has to consider any statutory or other framework in which it operates. In particular it is well established that when a statute has conferred on a body the power to make decision affecting individuals, the courts will only require the procedure prescribed to be introduced and followed by way of additional safeguards as that will ensure the attainment of fairness. In essence natural justice requires that the procedure before any decision making authority which is acting judicially shall be fair in all circumstances. The right to be heard has two facets, intrinsic and instrumental. The intrinsic value of that right consists in the opportunity which it gives to the individuals or groups, against whom decisions taken by public authorities operate, to participate in the proceedings by which those decisions are made, an opportunity to express their dignity as persons. The ordinary rule which regulates all procedures is that persons who are likely to be affected by the proposed/likely action must be afforded an opportunity of being heard as to why that action should not be taken. The hearing may be given individually or collectively, depending upon the facts of each situation. A departure from this fundamental rule of natural justice may be presumed to have been intended by the Legislature only in circumstances which warrant it and such circumstances must be shown to exist, when so required, the burden being upon those who affirm their existence…Although the courts have for a long time supplemented the procedure that had been laid down in a legislation where they have found that to be necessary for that purpose, before this unusual kind of power is exercised, it must be clear that the statutory procedure is insufficient to achieve justice and that to require additional steps would not frustrate the apparent purpose of legislation. Additional procedural safeguards will only ensure the attainment of justice in instances where the statute in question is inadequate or does not provide for the observance of the rules of natural justice. The courts took their stand several centuries ago, on the broad principle that bodies entrusted with legal powers could not validly exercise them without first hearing the people who were going to suffer as a result of the decision in question. This principle was applied to administrative as well as judicial acts and to the acts of individual ministers and officials as well as to the acts of collective bodies such as justices and committees. The hypothesis on which the courts built up their jurisdiction was that the duty to give every victim a fair hearing just as much a cannon of good administration is unchallengeable as regard its substance. The courts can at least control the primary procedure so as to require fair consideration of both sides of the case. Nothing is more likely to conduce to good administration. Natural justice is concerned with the exercise of power that is to say with acts or orders which produce legal results and in some way alter someone's legal position to his advantage. As part of a reasonable, fair and just procedure the court has a cardinal duty to uphold the constitutional guarantees, the right to fair hearing which entails a liberal and dynamic approach in order to ensure the rights enjoyed by an individual is not violated because there is no particular safeguards provided under section 62 that deals with the removal of a Judge in instances where there is a complaint against him."

39. It follows that this Court has the powers to interfere with the decision of the Respondent arrived at in the exercise of its statutory mandate where the Respondent's powers are not validly exercised. To make a decision adversely affecting the applicant without affording the applicant an opportunity of being heard is in my view such invalid exercise of power warranting this Court to interfere. In my view the applicant has proved to the contrary with respect to service on her as prescribed under section 3(5) of the ***Interpretation and General Provisions Act***.

40. In the premises I find merit in the Motion dated 3rd June, 2009.

Order

41. According the orders which commend themselves to me and which I hereby grant are as follows:

1. **An order of Certiorari is hereby issued calling into this Court for the purposes of being quashed the decision of the Respondent dated 24th November 2008 convicting the Applicant for failing to respond to correspondence from complaints commission dated 22nd November 2007 and 5th February 2008 which proceedings and decisions are hereby quashed.**
2. **An order of prohibition is hereby issued against the Respondent from proceeding with execution proceeding against the Applicant on the basis of its judgment and or decision dated 24th November, 2008 and/or forwarding their recommendations to the Chief Justice of the Republic of Kenya.**
3. **With respect to the order of mandamus sought it is not upon this Court to direct the Respondents to proceed after the decision has been quashed. Having quashed the Respondent's decision it follows that the parties revert to the position before the impugned decision was made.**
4. **The costs of this application are awarded to the applicant to be borne by the 1st Respondent.**

Dated at Nairobi this 24th day of July, 2014

G V ODUNGA

JUDGE

Delivered in the presence of:

Mr Njiru for Mr Olembo for the Respondent

Cc Kevin