



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL SUIT NO. 310 OF 2013(OS)**

**IN THE MATTER OF THE ADVOCATES ACT CHAPTER 16 OF THE LAWS OF KENYA**

**AND**

**THE CONSTITUTION OF THE REPUBLIC OF KENYA**

**AND**

**IN THE MATTER OF THE PETITION OF AHMED NASSIR ABDULLAHI TO BE ADMITTED  
TO THE ROLL OF ADVOCATES AND THE ROLL OF SENIOR COUNSEL**

**BETWEEN**

**BRYAN YONGO.....PLAINTIFF**

**VERSUS**

**THE HON. CHIEF JUSTICE .....1<sup>ST</sup> DEFENDANT**

**THE CHIEF REGISTRAR, HIGH COURT OF KENYA.....2<sup>ND</sup> DEFENDANT**

**THE HON. ATTORNEY GENERAL .....3<sup>RD</sup> DEFENDANT**

**THE LAW SOCIETY OF KENYA .....4<sup>TH</sup> DEFENDANT**

**AHMED NASSIR ABDULLAHI ADVOCATE.....5<sup>TH</sup> DEFENDANT**

**PETER SIMANI ADVOCATE.....6<sup>TH</sup> DEFENDANT**

**RULING**

1. The application before this Court is the amended Originating Summons dated 19<sup>th</sup> August 2013 brought under section 12, 13, 15, 16, 17, 18, 31, 32, 33, 34, 56, 70, & 85 of the Advocates Act Cap 16 Laws of Kenya and Articles 3, 10, 22, 23, 48, 165, and 258 of the Constitution of Kenya. The applicant seeks the following orders;

- 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 initio* having been issued by an unqualified person.

- ii. That the said Ahmed Nassir Abdullahi be struck off the Roll of Advocates Having breached Part IV of the advocates Act specifically section 13a(a)(b).
- iii. That this Court be pleased to declared the Certificate of completion dated 26<sup>th</sup> November 1992 upon which Ahmed Nassir Abdullahi obtained admission a forgery, null and *void ab initio* 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 Pupilage 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 recognizable 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 sanctions be meted against Ahmed Nassir Abdullahi.
- viii. That all pleadings, applications, judgments 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.

2. The application was based on the grounds that; Ahmed Nassir Abdullahi has never attended as a pupil and received from an advocate of such class as may be prescribed instructions in the proper business, practice and employment of an advocate for a period or any period at all which together with attendance of such course as may be prescribed exceed one year; that at the time Ahmed Nassir Abdullahi purported to have done his pupillage undergoing the instructions in the proper business, practice and employment of an advocate under the Peter Simani the said was not an advocate for purposes of Advocates Act Cap 16 as he had not taken out a valid advocates practicing certificate for the said period hence was unqualified as a confirmed by the Law Society of Kenya vide their letter dated 18<sup>th</sup> July 2013 and therefore not qualified to impart instructions in the proper business, practice and employment of an advocate; that in so acting Mr. Ahmed Nassir Abdullahi would be in effect engaging in practice in contravention of the Advocates Act in that he never attended pupillage nor issued with a certificate of completion of pupillage as required by Part iv, section 13(ii)b(i) of the Advocates Act; that fraud is an extrinsic, collateral act, which vitiates the most solemn proceedings of Courts of justice and as was held by Lord Coke it avoids all judicial acts, ecclesiastical or temporal; that fraud is a civil wrong when it breaches a duty not to deceive and may consist of false information or non-disclosure of true information and in either case the duty binds the represented not in abstract, whatever his moral obligation may do, but because it stands in a relationship with the recipient which calls in law for the truth; that section 31 and 33 forbids with serious sanctions any unqualified person from practicing law as an advocate and bars them from causing to be drawn summons or any other process from issuing , instituting, defending any suit or proceedings in his name or in the name of any other person in any Civil or Criminal Court jurisdiction. The applicant relied on the case of **MOHAMED ASHRAF SADIQUE & ANOTHER VS MOHAMMED OSEKO T/A OSEKO T/A OSEKO & COMPANY ADVOCATES [2009]** and **BELGO HOLDINGS LTD –VS- ESMAIL [2005] 2 E**; it was submitted that section 34 forbids unqualified persons from directly or indirectly taking instructions or drawing or preparing any documents relating to any legal proceedings that the Chief justice has prescribed a fee for this argument he relied on the case of **HUO –VS- ISLAMIC UNIVERSITY OF UGANDA [1995] 2 EA 117** , **KENYA POWER & LIGHTING COMPANY VS MAHINDA & ANOTHER [2004]LLR 4452 CAK** and **PRASHILLE LTD. VS RABAI ROAD ESTATE, HIGH COURT CIVIL CASE NO. 2336 OF 1994.**

3. The applicant referred to section 56 of the Advocates Act which provides that; “*Nothing in this Act shall supersede, lessen or interfere with the powers vested in the Chief Justice or any of the judges of the Court to deal with misconduct or offences by an advocate, or any person entitled to act as such, committed during, or in the course of, or relating to, proceedings before the Chief Justice or any judge*” and section 13 1(1)(b) which provides, “*having passed the relevant examinations of such university, university college or other institution as the Council of Legal Education may from time to time approve,*

*he holds, or has become eligible for conferment of, a degree in law in the grant of that university, university college or institution which the Council may in each particular case approve”*

4. He argued that the Court cannot allow itself to be made an instrument of enforcing obligations arising out of transactions that is illegal or immoral if the illegality is brought to its notice; that the Court cannot fashion or sanction that places hurdles on access to justice and that the standard guide on locus standi is in Article 48 of the Constitution of Kenya and jurisdiction under Article 165(3)(d)(ii) that section 3 of the constitution provides that the Constitution shall have the force of law if any other law is in consistent with the Constitution the Constitution shall prevail; that section 70 of the Advocates Act fraud is instructive in so far as it is not inconsistent with the Constitution; that transaction on illegality would be against public policy; that the admission of Mr. Ahmed Nassir Abdullahi was pegged on supporting of certificate of completion of pupillage alleging that he completed his pupillage under the tutelage of Mr. Peter Simani while in fact Mr. Peter Simani did not take out a Practicing certificate in the year 1992-1993 hence was unqualified and hence if any was offered was an exercise in futility and the said certificate of completion signed by Peter Simani dated 26<sup>th</sup> November 1993 in support of his application for admission is therefore a nullity for purposes of such petition having been signed by an unqualified person and there is no tangible or credible evidence that Mr. Ahmed Nassir Abdullahi obtained instructions on proper business practice prior to his employment as provided for under part iv, section 13(ii) (b) (i) of the Advocates Act. The applicant relied on section 9 in defining a qualified person. *“Qualifications for practicing as an advocate Subject to this Act, no person shall be qualified to act as an advocate unless—(a) he has been admitted as an advocate; and (b)his name is for the time being on the Roll; and (c) he has in force a practicing certificate.”*

5. The 4<sup>th</sup> and 5<sup>th</sup> defendants filed preliminary objections dated 2<sup>nd</sup> September 2013 and 13<sup>th</sup> August 2013 respectively. The 4<sup>th</sup> defendant raised grounds that he is wrongly enjoined in the suit for reasons that:-

- i. It is the Council of Legal Education which is responsible for the conduct of pupillage and verification of pupillage Certificates before one is gazette and subsequently admitted as an advocate.
- ii. The advocate becomes member of law society of Kenya upon meeting the requirements set out by the Council of Legal Education consequently to which they are admitted to the Bar and they sign the Roll of Advocates. As such the law Society does not have custody of any advocate’s pre-admission documents.
- iii. The plaintiff has no cause of action against the 4<sup>th</sup> defendant and none is disclosed in the amended Originating summons.

6. The 5<sup>th</sup> defendant raised a preliminary injunction dated 13<sup>th</sup> August 2013 on grounds that;

- i. That the plaintiff has no justifiable cause of action known in law against the defendants;
- ii. That the process of admission as an advocate is through petition to the Chief justice involves all necessary parties including the Law society of Kenya and Council for Legal education who have the statutory mandate to supervise/exempt pupillage. The notice for petition for admission to the bar is publicly exhibited for one month notice and upon hearing the petition the chief justice makes an order in open court. This court therefore has no jurisdiction to entertain this suit.
- iii. That the suit statutory barred having been filed more than twelve months after the admission of the 5<sup>th</sup> defendant as provided for under section 70 of the Advocates Act cap 16.

7. The 5<sup>th</sup> defendant further filed a replying affidavit dated 20<sup>th</sup> February 2014 in reply to the applicant’s amended Originating summons dated 19<sup>th</sup> August 2013. he deponed that he graduated from the university of Nairobi in 1990 and proceeded to do his pupillage with P. L. Simani in 1990-199; his pupil master signed his Completion certificate; that he left for Cornell University in August 1992 to persue his masters and on attaining his Masters of Laws returned and began his own law firm way before the provisions of section 32 of the Advocates Act came into operation and had served on various commissions; that the allegations by the plaintiff is calculated to settle personal scores and undermine his name and integrity;

that the applicant swore an affidavit dated 3rd May 2012 swearing to having witnessed him forge the late P. L. Simani's signature in November 1992 and only sought remedy now; that the High court has no jurisdiction to set aside, vary, review or alter the Chief justice's order; that the suit is statute barred as set out in section 70 of the Advocates Act; the plaintiff has made several allegations against the 6th deceased who is since deceased and has withdrawn the suit against him and the court cannot make a determination on the same without the 6th defendant who was a necessary party in this matter.

8. The application came up for hearing on 24/6/14 and the applicant sought to withdraw suit against the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> defendants expunging their Preliminary objections and submissions. What this court has to determine in this ruling is the preliminary objections raised by the 4<sup>th</sup> and 5<sup>th</sup> defendant.

#### **4<sup>TH</sup> DEFENDANT'S SUBMISSIONS**

9. The 4<sup>th</sup> respondent submitted that the suit being statute barred was a pure point of law which if successful would have the effect of disposing of the suit or application entirely and urged the Court to proceed with their determination as they did not require any factual ascertainment; the 4th respondent relied on the case of **MUKHISA BISCUIT MANUFACTURING CO. LIMU VS WEST END DISTRIBUTORS LIMITED [1969] E.A 696** where it was held, *"A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of preliminary objection does nothing but unnecessarily increase costs, and, on occasion, confuse the issues. This improper practice should stop."*

10. It was further submitted that the 5<sup>th</sup> defendant was admitted to the Roll in 1993 almost 20 years ago and no application was filed to have him struck off the Roll and only complaints against the 5<sup>th</sup> defendants are the ones raised before the advocates complaints Committee; that filing this suit 20 years later is in clear breach of section 70 of the Advocates Act (Cap 16) and the same cannot stand. The 4<sup>th</sup> respondent relied on the case of **KENYA PLANTATION AND AGRICULTURAL WORKERS UNION –VS- MUNUNGA LEAF BASE [2013] EKLK**, where it was held, *"this court appreciates the important role played by the law of limitation to illustrate, it is premised on the principle that over time evidence can be corrupted or disappear, memoirs fade and companies dispose of records. The best time to bring a suit therefore is when the memories are still fresh and evidence intact. People want to get on with their lives and not have legal battles from their past come up unexpectedly"*.

11. That the 6<sup>th</sup> defendant is deceased and the plaintiff has to withdraw his name from the suit and being a significant party to this suit would have assisted the court to shed light on various matters raised by the plaintiff; that the limitation of actions Act provides for leave to extend time within which a claimant may file a claim where the time frame has expired which the plaintiff has failed to do so as such his claim must fail. On the issue of whether the 4<sup>th</sup> defendant is properly enjoined the 4<sup>th</sup> defendant called upon the Court to look at its mandate as provided for under Section 4 of the law society of Kenya Act, (Cap 18). It was its contention that it is not mandated in any way to conduct or verify pupillage certificates of pupils who had been admitted to the bar but the mandate of the Council for legal Education and further referred the Court to section 6, 13 of the Council for legal Education Act and added that the 4<sup>th</sup> defendant only becomes a regulatory body over the said advocate after the advocate had been issued with a practicing certificate and therefore it was wrongfully enjoined in this suit as the 4<sup>th</sup> defendant plays no role in this suit.

12. It was further submitted that the plaintiff has committed perjury and referred the Court to the sworn affidavits dated 21<sup>st</sup> May 2012 paragraph 3 where the plaintiff admits to lying on oath and affidavit in support of his Originating Summons sworn on 1<sup>st</sup> August 2013 and that he claims nothing had been done while in essence he had withdrawn the complaint against the 5<sup>th</sup> defendant; the two affidavits contradict each other and therefore cannot stand. He referred the Court to section 114 of the Penal Code. Which provides that, *"A person who swears falsely or makes affirmation or declaration before any person*

authorized to administer an oath or take a declaration upon a matter of public concern under such circumstances that the false swearing or declaration if committed in a judicially proceeding would have amounted to perjury, is guilty of a misdemeanor”; that perjury once raised should be treated as jurisdiction and before the court can entertain his claim the court should determine the plaintiffs locus standi; the applicant seeks equitable remedies and in such cases an applicant should come to court with clean hands; it relied on the case of **JOHN BOUG BANGE -VS- CHRISPIN ALUOCH AND OTHERS KISII HIGH COURT**, “An applicant who makes statements, which are obviously untrue, disqualifies him from coming to court for an equitable remedy.” and also the case of **LUCY WANJIRU NJUNGE & 2 OTHERS –VS- JOB MWANGI MACHARIA AND 9 OTHERS (2005) eKLR** where the plaintiff held:-“ the first two plaintiffs openly lied under oath and actually committed perjury by stating that they were not parties to the suit HCCC No. 142 of 2005 while indeed they were. An affidavit cannot be amended by counsel’s verbal word that a technical omission was made by her and seek to exonerate the deponents from fault yet they are the ones who swore the truth of their disposition. I hold that the verifying affidavits are improper and bad in law and must be struck out which I hereby do”.

13. Further the 4<sup>th</sup> respondent submitted that the constitution despite being the supreme law of the land is not relevant at this preliminary stage and urged the court to dismiss the plaintiff’s application.

### **5<sup>TH</sup> DEFENDANTS SUBMISSIONS**

14. The 5<sup>th</sup> defendant submitted that section 70 of the Advocates Act provide, “Limitation of time for certain applications to strike names off the Roll Subject as hereinafter provided, no advocate shall be liable to have his name struck off the Roll on account of any defect in his admission and enrolment, unless the application to strike his name off the Roll is made within twelve months after the date of his enrolment: Provided that this section shall not apply to any case where fraud is proved to have been committed in connection with the admission or enrolment”; that the said section is very clear. The 5<sup>th</sup> defendant was admitted to the roll of advocates on 18<sup>th</sup> March 1993 and any application to have any application to have his name struck off the roll of advocates have been made within 12 months of that admission. The application herein is made over twenty years after the 5<sup>th</sup> defendant’s admission and enrolment; that the said section does not make any exception except where fraud is proved to have been committed in connection with the admission or enrollment.

15. That paragraph 2 & 3 of the applicant constitute perjury and that ought to be enough to dispose of the suit; that the letter dated 16<sup>th</sup> July 2012 confirming that the 5<sup>th</sup> defendant was indeed his pupil in 1990-1991 and he signed his Certificate of completion in the manner a pupil master normally does; that fraud being a tort ought to have been brought before the expiration of 3 years hence the applicant’s application is caught up by limitation of action and no remedy is open for the plaintiff who claims to have knowledge of purported fraud for over 20 years. He referred the Court to section 4(2) of the Limitation of actions Act provides; “An action founded on tort may not be brought after the end of three years from the date on which the cause of action accrued: Provided that an action for libel or slander may not be brought after the end of twelve months from such date”.

16. It was further submitted that a plaintiff with reasonable cause of action should in law pursue them with reasonable diligence. No evidence has been adduced on allegation that the registration of AhmedNassir Abdullahi & associates was registered in breach of section 32. The supervisory mandate of pupillage is purely a mandate of thereof the council for legal Education as provided for under the Act who is not a party to this suit and the plaintiff has no justifiable cause of action.

17. On Articles 258, 48 and 165(d) counsel argues that the same do not aid the applicant as this is not a constitutional case based on contravention of the Constitution. The applicant has moved the Court via Originating Summons which is a special procedure rules, but fails to disclose under which provision the Summons is instituted.

18. The allegations made make reference to P. L. Simani who is since deceased and the Court cannot make any determination without this necessary party. Counsel referred the applicant to the process of

admission as an advocate as provided for under section 15 of the Advocates Act (Cap 16). The application for admission by the 5<sup>th</sup> defendant was made in chambers with the relevant parties being Council for Legal Education and the Law Society of Kenya. The Chief Justice being convinced that the same was qualified, served and morally fit, adjourned the petition for hearing in an open Court before granting the orders that the petitioner be admitted as an advocate. The Chief justice granted the orders and the High Court lacks jurisdiction.

### **PLAINTIFF'S SUBMISSIONS ON DEFENDANTS' PRELIMINARY OBJECTIONS**

19. The plaintiff argued that the preliminary objections did not raise a pure point of law and that there must be factual situation which the Court must take cognizance. He relied on the case of East African Court of Appeal in **MUKHISA BISCUIT MANUFACTURING COMPANY LIMITED -VS- WEST END DISTRIBUTORS [1969] E.A** that a point of law must be able to stand on its own without support from factual issues; that a notice of preliminary objection does not constitute a pleading and in absence of pleadings there is no basis for the same he referred the court to section 2 of the Civil procedure Act. He relied on the case of **HIGH COURT OF KISUMU CIVIL APPEAL NO. 199 OF 2002 WILLIAM OGADA RAO & 8 OTHERS VS ABIASI F. SEPHANIA & 3 OTHERS**; that the foundation was faulty and hence you cannot put something on a faulty foundation and that a Court has no jurisdiction to act on an issue which it has not pleaded. The defendants having raised no response to the Originating summons coming as a preliminary objection is a subterfuge. It was further submitted that striking out a pleading is a draconian act which may only resorted to in plain cases and refutes the defendants claim that an originating summons can be used to raise a frivolous claim. He relied on the case of **D.T.DOBIE VS MUCHINA [1982] KLR1**. He submitted that the preliminary objections raised were incompetent and should be struck out.

20. He submitted further that the suit raises issues of public interest involving the judicial process as an avenue to the fulfillment of the bill of rights safeguard for social justice he referred the court to Article 259, 159 2(d) of the Constitution. He submitted that the preliminary objections by the defendants do not meet the threshold for reasons that perjury must be proved; whether the matter that Court must ventilate on at trial stage and also that Locus standi is also a matter that the Court must ventilate on in trial; that section 56 of the Advocates Act expressly saves the preserve of the Court's jurisdiction to deal with breach of any provision of the Advocates Act. On issue of no cause of action the applicant submitted that it is trite law that the plaint be looked at. He relied on the case of **Nyagah -vs- Nyamu & Another [1976] KLR 73**.

21. It was submitted that fraud being a serious allegation must be specifically pleaded and proved relied on the case of **BALY -VS- POLLARD AND MORRIS [1930] ALL ER 609** further that lack of cause of action is procedural technicality and could be remedied by a minor amendment; he submitted that the rules of procedure are meant to facilitate the administration of justice and the court should decide the issues raised in the Originating summons on merit, the cumulative circumstances and evidence of the case; he referred the Court to section 3B of the Civil procedure Act, double o principle and relied on the case of **PURUSE PTY CITY -VS- CITY COUNCIL OF SYDNEY [2007]NSWLEC 163**; that he disputes the points of law raised and seeks to bring evidence to prove the same in the circumstances he argues that it would be unconstitutional not to give him an opportunity to lead evidence he relied on the case of **ORARO MBAJA [2005] LLR 7550 (HCK)1 KLR 141**.

22. On locus standi the applicant submitted is the right to appear and be heard in Court or other proceeding he relied on the case of **Mumo Matemu -vs- Trusted Society of human rights alliance & 5 Others, Civil Appeal No. 290 of 2012**. He submitted that section 70 of the advocates Act does not apply in this instance in that the applicant enumerated the particulars of alleged fraudulent acts and if these are proved the same would not be innocent misrepresentation and since fraud is a conclusion it would not be necessary to allege it this he argues cannot bar the plaintiff's claim by dint of the said section; that section 26 of the advocate Act provides that time starts to run when the fraud is discovered or ought to have been discovered if reasonable diligence had been applied. He relied on the case of **B.E.A Timber Co. vs Index Singh Gill Court of appeal at Nairobi, Civil appeal No. 82 of 1958**.

23. I have considered the affidavits; the submissions and the authorities relied by the parties in canvassing their cases. In my view there are three issues raised in the objections before the court for determination. These issues as summarized are:-

1. The validity of the preliminary objection.
2. Limitation of Actions
3. Locus of the plaintiff.

***Whether the 4<sup>th</sup> and 5<sup>th</sup> defendants' objection is a proper preliminary objection?***

The applicants view is that a preliminary objection must be based on pleadings and that the 4<sup>th</sup> and 5<sup>th</sup> defendants have not filed any pleadings.

In the case **Oraro Mbaja (2005) 1 KLR 141** Ojwang J as he then was held that, *"A preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit"*

In my view a preliminary objection on a point of law can be pleaded or can be argued at the preliminary stage of any trial. The objection raised by the 4<sup>th</sup> and 5<sup>th</sup> defendants arises from the amended Originating summons filed by the applicant. If an objection is upheld it can dispose of a suit and if rejected the parties proceed as directed by court. The preliminary objections raised by the 4<sup>th</sup> and 5<sup>th</sup> defendant are proper. I shall proceed to consider them. The 4<sup>th</sup> defendant has raised the objection that they are wrongly enjoined in the suit because the council of legal Education is responsible for the conduct of pupillage and verification of pupillage certificates before one is gazette and subsequently admitted as an advocate. In considering this objection I have looked at the provisions of the Law society Act and the Provisions of the Counsel of Legal Education Act .Section 4 of the Law Society Act gives the Law Society its mandate as follows, ***"The objects for which the society is established are:-***

- a. To maintain and improve the standards of conduct and learning of the legal profession in Kenya;***
- b. To facilitate the acquisition of legal knowledge by members of the legal profession and others***
- c. To assist the government and the courts in all the matters affecting legislation and the administration and practice of the law in Kenya***
- d. To represent ,protect and assist members of the legal profession in Kenya in respect of conditions of practice or otherwise***
- e. To protect and assist the public in Kenya in all matters touching ancilliary or incidental to the law***
- f. To acquire,hold,develop and dispose of property whether movable or immovable and to derive capital or income therefrom for all or any of the foregoing objects.***
- g. To raise or borrow money for all or any of the foregoing objects in such manner and upon such security as may from time to time be determined by the society***
- h. To invest and deal with monies of the society not immediately required in such manner as may from time to time be determined by the society and***
- i. To do all things that are incidental or conducive to the attainment of all or any of the foregoing objects."***

Under this mandate the Law Society is not responsible for the conduct of pupillage and verification of pupillage certificate before one is gazette and subsequently admitted as an Advocate. In the Amended Originating Summons, the applicant is seeking to have an order that the certificate of completion for pupillage of the 5<sup>th</sup> Respondent for admission as an advocate be declared null and void. Section 6 (2) (a) (i)of the Council of Legal Education Act empowers the council to establish, manage and control such training institutions for the organization and conducting courses of instruction for the acquisition of legal knowledge ,professional skills and experience by persons seeking admission to the Roll of Advocates in Kenya in such subjects as the Council may prescribe. Section 14 of the said Council of Legal Education Act provides that CLE may make regulations for the training of pupils by advocates and their respective

conduct, duties and responsibilities. This role of the CLE is recognized in the Advocates Act cap 16 .In my view, CLE therefore excises the general supervision and control over legal education in Kenya and has the statutory duties and responsibilities in respect of the engagement and training of pupils by advocates. Kenya School of Law works with the CLE which exercises this mandate. It is only after an advocate has been sworn in that the 4<sup>th</sup> defendant as a society takes up its mandate as provided under section 4 of the Law Society Act. I therefore find and hold that on this ground alone the 4<sup>th</sup> defendant is wrongly enjoined in this suit therefore the suit against them is struck off from the Originating Summons.

### ***Whether this suit is statutorily barred***

One of the 5<sup>th</sup> defendant's objection is that the applicant suit is statutorily barred having been filed more than 12 months after the admission of the 5<sup>th</sup> defendant as provided by section 70 of the Advocate's Act Cap 16. Section 70 provides that;

**“Subject as herein provided, no advocate shall be liable to have his name struck off the roll on account of any defect in his admission and enrolment, unless the application to strike his name of the roll is made within twelve months after the date of his enrolment provided that this section shall not apply to any case where fraud is proved to have been committed in connection with the admission or enrolment”**

The applicant's submission is that the 5<sup>th</sup> defendant fraudulently procured his admission by dint of a flawed and/or irregular certificate of completion of pupillage as enumerated in the Amended Originating Summons. The proviso of section 70 states that the issue of limitation will not apply to any case where fraud is proved to have been committed in connection with the admission or enrolment. It has been submitted by the 5<sup>th</sup> defendant that fraud is a tort and any action of fraud brought under the expiration of three years is time barred. Fraud is defined in the Blacks Law Diction 9<sup>th</sup> Edition **as usually a tort but in some cases a crime**. The applicant did not report the alleged crime and going by the definition of the dictionary that fraud is a tort then the provisions of section 4(2) come into play that no action founded on tort maybe brought after three years from the date on which the cause of action accrued. The 5<sup>th</sup> defendant was admitted to the bar on 18<sup>th</sup> March 1992. The applicant filed this suit in August 2013 twenty (20) years after the 5<sup>th</sup> defendant had been admitted to the bar. Further in an affidavit (**Annexure AA5**) attached the 5<sup>th</sup> Defendant's Replying Affidavit to the Originating Summons at paragraph 5 to 7 of the said affidavit sworn by the Applicant on 3<sup>rd</sup> May 2012, the applicant avers on oath that he saw the 5<sup>th</sup> defendant sign documents in his presence purporting it to have been signed by Peter Simani, now deceased. In this case the applicant knew about the alleged acts he purports to have been committed and had the opportunity to challenge the same within the provided period under section 70 of the Advocates Act. I therefore uphold the 5<sup>th</sup> Defendant's objection that the suit is statutory bared and is hereby struck.

### ***Locus standi of the Plaintiff***

The 5<sup>th</sup> defendants have submitted that the applicant has no locus to institute this suit for the reasons that he is a stranger to this suit. They relied on section 15 of the Advocates Act which provides that the necessary parties are the council of legal education and the Law Society of Kenya therefore the plaintiff has no locus to institute this suit. The applicant has not shown this court the relationship he has with the 5<sup>th</sup> defendant in order to institute this suit. In a civil suit of this nature the applicant is obligated to show the relationship he has with the 5<sup>th</sup> defendant for him to present his grievance i.e is he representing he Law Society of Kenya, the Council of Legal Education, a litigant who had given the 5<sup>th</sup> defendants instructions to act for him in any matter in court or tribunal etc. The applicant relied on Article 258, 48 and 165 3(d) (ii) of the Constitution. He further cited the case of **Mumo Matemtu –vs- Trusted Society of Human Rights Alliance & 5 others Civil Appeal No 290 of 2012** where the court held that *“Moreover we take note that our commitment to the values of substantive justice, public participation, inclusiveness ,transparency and accountability under Article 10 of the Constitution by necessity and logic broadness access to the courts. In the broader context, this court cannot fashion nor sanction an*

*invitation to a judicial standard for locus standi that places hurdles on access to the courts, except only when such litigation is hypothetical, abstract or is an abuse of the judicial process.”* This case was a petition , the plaintiff filed an originating summons . The Articles cited are anchored on the convention of a personal right to justice but the applicant has not demonstrated how these provisions of the Constitution have been contravened. Further the applicant’s interest does not fall under Article 258 (2) of the Constitution.

The up short of this ruling is that the objections raised by the 4<sup>th</sup> and 5<sup>th</sup> defendant have merit and the claims against them are dismissed with costs to the Applicant.

Dated, signed and delivered this **21<sup>st</sup>** day of **November** 2014.

**R.E. OUGO**

**JUDGE**

In the presence of:-

.....For the Plaintiff/Applicant

.....For the 4<sup>th</sup> defendant/Respondent

.....For the 5<sup>th</sup> defendant/Respondent

.....Court Clerk