



**REPUBLIC OF KENYA**

**High Court at Nyeri**

**Civil Case 66 of 2012**

FRANCIS MACHARIA KAMAU & 10 OTHERS.....PLAINTIFFS

**VERSUS**

REGINA NYAMBURA KAMAU.....1ST DEFENDANT

GRACE WAMBUI KAMAU.....2ND DEFENDANT

**RULING**

The application before court is dated 6th February 2013. It seeks three prayers namely;

- a) THAT this matter be certified urgent and be heard exparte in the first instance.
- b) THAT this suit and the application dated 12th April 2012 and all subsequent orders be dismissed with costs.
- c) THAT the costs of this application be provided for.

The application is supported by the affidavit of N.M. Kiriba an advocate of the High Court of Kenya, and on grounds that the suit and application dated 12th April 2012 were filed and all subsequent orders were illegally obtained by an unqualified person. Moreover that the person who made the application was and still is in contempt of court as he contravened section 31, 33 and 34 of the Advocates Act.

The application was served on *Nindo and Company Advocates* but he failed to turn up for the hearing.

On the 6th of November 2012, Mercy K. Wambua the Deputy Secretary (Compliance and Ethics) of the Law Society of Kenya wrote to Wambua Njuguna Kibira and Company advocates intimating that according to the records of the Law Society of Kenya **Mr. Duncan Mindo** Advocate last took out a practicing certificate in the year 2001, and has not taken out a practicing certificate since then and hence he is not certified to practice in the year 2012.

It is trite law that an advocate who does not have a practicing certificate has no authority to draft, draw and file pleadings in court, let alone appearing in court on behalf of a client. In the case of **Orao Obura -VS- Martha Koome Civil Appeal No.146/2000** the Court of Appeal struck out a memorandum of appeal on grounds that the advocate did not have a practicing certificate when he drew and filed the same. The learned court of appeal held that under section 9 of the Advocates Act the absence of a practicing certificate meant that the person filing the memorandum of appeal was unqualified and as such he had no right to file the appeal.

I agree with the holding in *Lenaola J in Belgo Holdings Ltd -VS- Akbar Abdullah Kassam Esmail in HCCC No.244 of 2004* that acting without the practicing certificate calls for the striking out of any pleading filed. I also hold that acting in court without the practicing certificate is acting in contempt of court and allowing documents filed by a person without a practicing certificate is condemning contempt in court.

The upshot of the above is that Mr. Dancan Mindo did not take up a practicing certificate for the year 2012 and therefore all documents drawn and filed in his name are a nullity, **however**, instead of dismissing the suit as prayed by the applicant I order that the suit and the application dated 12th April 2012 be and are hereby struck out and all orders obtained thereon are declared a nullity. Costs to defendants.

***Dated, signed and delivered at Nyeri this 19th day of March 2013.***

**A. OMBWAYO**

**JUDGE**