

REPUBLIC OF KENYA

High Court at Mombasa

Succession Cause 31 of 2006

IN THE MATTER OF ESTATE OF NICOLA POLCINO

RULING

By this chamber summons brought under certificate of urgency, the applicant **COSIMO POLCINO** and his advocate **MR. INAMDAR** seek to be granted leave to institute contempt proceedings against **MACHARIA NG'ARU** the respondent's advocate in respect of a series of articles published in the local media. It is alleged that during the pendency of these proceedings the respondent has **caused to be published** in several newspapers a series of articles giving his own opinion and that of his clients regarding the matter in dispute. It is further alleged that the said opinions/articles have been prejudicial to the legal practice of the Applicant Advocate and his law firm.

I have considered the submissions made by **MR. INAMDAR** in support of the application. I have also perused the annexed newspaper articles as well as the cited authorities. I note that the application seeks leave to institute contempt proceedings **only** as against the respondent advocate. No mention is made of the newspapers who have printed the said articles. The allegation is made that the Respondent Advocate **caused** said articles to be published. Surely the decision of whether or not to publish any article or opinion piece rests squarely with the Managing Editor of the Newspaper in question. I fail to see how the respondent, a legal practitioner would be in a position to influence what is to be published in any newspaper. If anyone was to be held responsible for the publication of these articles it would be the newspapers yet the applicant does not seek leave to institute any action against them.

An application to have Mr. Inamdar excluded from continuing to act in this matter is pending before this court. It is yet to be heard and determined. It would be injudicious to allow these contempt proceedings to be instituted as they touch on a matter which is yet to be determined by the court. The court ought not allow a multiplicity of applications over the same matter.

In my opinion the newspaper articles may be misguided but are simply the reporters' attempt to provide coverage of the court proceedings. I do not find evidence to suggest that the publication of those articles were in any way influenced by the Respondent Advocate.

As such I hereby decline to grant the leave sought. No orders on costs. In addition I do direct that the press report **only** factually on court proceedings and in addition, I do further direct that **both** counsel desist from giving any interviews and/or engaging the media over this case.

Dated and delivered in Mombasa this 15th day of April, 2013.

M. ODERO

JUDGE