



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI LAW COURTS'
CIVIL APPEAL NUMBER 461 OF 2011

T O KOPERE APPELLANT

AND

THE DISCIPLINARY COMMITTEE

LAW SOCIETY OF KENYA 1ST RESPONDENT

SISTER DOMINIC SAUID OKOTH. 2ND RESPONDENT

RULING

The application before the court is a Notice of Motion by the Applicant, Tom O Kepere, Advocate, dated 12th October, 2011. It mainly seeks a stay of execution of the Judgment/Order of Conviction of the Disciplinary Committee of the Law Society of Kenya dated 12th September, 2011 and any further proceedings, mitigation and sentence, in relation thereto pending the hearing and determination of this appeal on such terms as the court may impose.

The reasons advanced in support of the stay sought, if this court understands it sufficiently, is that the Applicant/Appellant will suffer substantial loss and damage in his profession and practice of law if the judgment and order of the conviction is executed by way of sentence before the appeal is finally determined. That the sentence likely to be meted out by the Disciplinary Committee of the Law Society, the 1st Respondent, may be either striking out the Applicant's name from the Roll of Advocates, suspending him, admonishing him, fining him or ordering restitution.

The applicant also argues that this application was filed timeously and without unreasonable delay. That there will be no prejudice to the Respondents if the grant of the stay is given, and that the Applicant was about to file separate proceedings to determine which party is entitled to the Documents of Title, the ownership and custody of which, is the basis of the conviction of the applicant by the Disciplinary Committee aforesaid. And finally, that the pending appeal has high chances of success and therefore the sentencing will render the expected success, nugatory.

On the other hand, the Respondents stated that the intended appeal is premature in so far as

sentencing has not been made by the relevant Committee. They stated also that the disciplinary proceedings started about eight (8) years ago now, and that while the Committee may not itself stand to suffer prejudice, the complainant, 2nd Respondent, has all along suffered and has been prejudiced. That she failed to receive in her custody, the title documents and ownership of the property for which she paid substantial funds to purchase.

I have carefully perused the Record of Appeal, the Memorandum of Appeal and the affidavits supporting and opposing the application. There is no dispute, and it is a common ground, that the Disciplinary Committee of the Law Society of Kenya has not sentenced the applicant. The Appellant's appeal before the scheduled end of proceedings for the disciplinary hearing, appears to me to be totally strange and one unknown to process and practice. It is clearly an interference of the lawful procedure laid down by the relevant Act and the rules of procedure promulgated to guide such proceedings. The Applicant's action of filing an appeal against incomplete proceedings cannot accordingly, be explained upon any other reasonable hypothesis than for the purpose of scattering the sentencing with a view to earn a delay which clearly, the Applicant yearns for, to protect the status quo of his legal practice.

Furthermore, the judgment pronounced by the Disciplinary Committee, cannot by any known standard be considered as complete until the relevant sentence legally provided to flow from the judgment, is pronounced. No one, not even the applicant, in my view, has a right to anticipate what the sentence of the Disciplinary Committee will be, until it is legally pronounced. Indeed to try to stop the Committee from completing carrying out its legal mandate under the relevant law, appears to me to be an illegal exercise which this court in its unfettered discretion, will not be willing to assist the applicant to achieve. The stay sought if granted, will without doubt assist the applicant in preventing a lawfully constituted tribunal from carrying out its lawful mandate.

Furthermore, this court sees no more loss or damage that the Applicant will suffer if the stay sought is not granted, than that provided by the relevant law. This is because the Applicant has already gone through a lawful process of trial and has been found guilty of the offence he was charged with. Sentencing expected to crown the said process, is the legal consequence of the conviction. It will not be more than what the Applicant and the public expected under the law. There appears, therefore, no legal basis upon which this court should prevent the sentencing from taking place. The Applicant has neither demonstrated any. It should and will, therefore, be allowed to take place. Thereafter the Applicant will be at liberty to challenge it.

Finally, it is sufficient that this matter and proceedings arising from it have taken such a long period, clearly to the detriment of one or the other of the parties in the matter. The matter should without delay, be brought to a quick end, whichever way it will end. Since the Record of Appeal and the Disciplinary Committee's record are available in this file, the appeal should soon be fixed for directions so that the appeal will be heard on merit.

In the meantime, the application for stay of proceedings and sentencing by the Disciplinary Committee of the Law Society of Kenya, is hereby refused and dismissed. Costs are to the Respondents. Orders Accordingly.

This file continues being kept by the Deputy Registrar, in the safe box.

Dated and delivered at Nairobi this 21st day of March 2012.

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D A ONYANCHA
JUDGE