



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)  
Civil Case 133 of 2007**

**B. N. MUCIRA & CO. ADVOCATES .....PLAINTIFF**

**VERSUS**

**MBO-I-KAMITI CO. LTD ..... DEFENDANT**

**RULING**

**Coram: Mwera J.**

**Mucira N/A for Applicant**

**Rombo for Njogu for Defendant**

The notice of preliminary objection dated 10/8/09 was filed following a notice of motion dated 22.10.08 brought by the applicant in this cause who styled himself as B. N. Mucira, Advocate. The term “styled” is used in the light of the fact the preliminary objection states that Mr Mucira was not an advocate of the High Court for a long time even as today.

The notice of motion sought the court to enter judgement for Mr. Mucira against the respondent company in the sum of sh. 3,259,929/= as costs taxed in an advocate –client bill filed in court on 22.2.07.

M/s D. N. Njogu Advocates for the respondent objected to that notice of motion on a point of law (SS. 9, 31 Advocates Act) in that the applicant (Mr. Mucira) was and is not competent and qualified to act as an advocate for the reason that he was suspended from practice by the Disciplinary Committee of the Law Society of Kenya on 6.3.06 and thus he could not have rendered any legal services to the respondent as at 12.04.06. Mr Mucira has not taken out a practicing certificate since 2001 to date. Therefore the bill of costs (above), the subsequent certificate of costs thereof and the application for settlement plus terms and the entire proceedings herein were a nullity and void ab initio. Mr Mucira having not taken out a requisite advocate’s practising certificate for the time in issue had no capacity or competence to take instructions and transact legal business from clients and before court. That by engaging in such when he had no practicing certificate Mr Mucira acted in contempt of court and so the preliminary objection ought to be upheld.

At the hearing of this preliminary point Mr Rombo (for Mr Njogu) filed an affidavit of service sworn on 8/2/10 to the effect that Mr Mucira was served with the requisite hearing notice which he acknowledged. He did not file any papers to oppose the preliminary objection and he did not attend court either. So Mr. Rombo urged the court to uphold the preliminary objection.

In paraphrase, S. 9 of the Advocate’s Act says that no person shall be qualified to act as an advocate unless he has been admitted as an advocate and has his name for the time being on the Roll and has in force a practising certificate. When one is suspended from practice, his practising certificate shall be deemed not to be in force. In those circumstances such a person is unqualified to act as an advocate and if he engages in duties and business of an advocate eg. filing processes in court and appearing in court proceedings, that person shall be deemed to be in contempt of court.

All these were laid out in the notice of preliminary objection which was not opposed. In the event, all the proceedings in this cause transacted by Mr. Mucira are thus null and void ab initio. Mr Mucira was not qualified as an advocate to transact them by virtue of his suspension by the Disciplinary Committee of the Law society of Kenya. By undertaking those transactions in such circumstances Mr Mucira was acting in complete contempt of court – a thing that should be deprecated in the strongest terms possible.

In sum the preliminary objection is upheld.

Orders accordingly.

Delivered on 24.2.10.

**J. W. MWERA**

**JUDGE**