



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Appeal 460 of 2007

STANBIC BANK KENYA LIMITED..... APPELLANT/APPLICANT VERSUS

GEOFFREY NDIKU MUTISYA.....1ST RESPONDENT

DIKEMWA ENTERPRISES.....2ND RESPONDENT

R U L I N G

1. By a Notice of Motion dated 11th May 2009, Stanbic Bank Kenya Ltd, who is the appellant in this appeal, has moved this Court seeking to have all proceedings and applications brought before this Court on behalf of the 1st respondent by Daniel Mutisya Ngala trading as Mutisya Ngala & Company Advocates, be expunged from the record, as the said advocate was not holding any practicing certificate in the year 2008 or the year 2009. The appellant further seeks to have the said Daniel Mutisya Ngala punished by this honourable Court for practicing before it without a practicing certificate. The appellant also seeks an order that it be at liberty to sell motor vehicle registration numbers KAS 535Y, and KAW 143D.

2. In an affidavit sworn by Hannah Ndarwa, a credit recovery officer of the appellant, it is deponed that Daniel Mutisya Ngala does not hold an advocate practicing certificate for the years 2008 and 2009. Reliance is placed on two letters, one dated 11th November, 2008 and another dated 21st April 2009 from the Law Society of Kenya confirming that position.

3. It is further deponed on behalf of the appellant that contrary to the order made by the Hon. Nambuye, J., that the hearing of the appeal be expedited, the hearing of the appeal cannot proceed for as long as the 1st respondent is represented by an unqualified person. It is contended that the 1st respondent has failed, refused or neglected to comply with the orders given by the Hon. Nambuye, J. with regard to payment of monthly rentals in respect of motor vehicle KAW 143D, and motor vehicle KAS 535Y. The appellant therefore prays that it be allowed to sell the said vehicles to mitigate its losses.

4. A hearing date for the motion was fixed *ex parte* by the appellant's counsel on 28th May, 2009. An affidavit of service was filed on 29th of June, 2009 showing that the respondents were served with a hearing notice in respect of the application dated 11th May, 2009 on 10th June, 2009. However, no replying affidavit or grounds of opposition was filed. When the motion came up for hearing before me there was no appearance for the respondents, and the Court directed that the motion be heard *ex parte*.

5. Counsel for the appellant has urged the Court to grant the orders sought relying on the following authorities:

- ***Orao Obura vs. Koome [2001] KLR 109***

- *Kenya Power and Lighting Co. vs. Chris Mahinda [2005] eKLR*
- *Kulecho & Co. Advocates vs. Joel Kiema Mutinda & Ano. [2006] eKLR*
- *Ibnul Hassan Razvi vs. Dineshchandra Gordhanaass Bhatessa & Ano. [2005] eKLR*
- *Menno Travel Services vs. Co-operative Bank Kenya Ltd. [2004] eKLR*
- *Biwott vs. Mbuguss and Another [2002] 1KLR 312*

6. It is clear from the Court record that the 1st respondent is being represented by Mutisya Ngala & Co. Advocates. A serious allegation has been made on oath regarding the competence of Daniel Mutisya Ngala trading as Mutisaya Ngala & Co. Advocates. There has been no response to these serious allegations. In the circumstances and in the light of the letters from the Law Society of Kenya, confirming that Daniel Mutisya Ngala does not hold a practicing certificate for the years 2008 or 2009, it is evident that the said person is not qualified to appear for the 1st respondent in these proceedings.

7. Accordingly, all the documents filed by the said firm on behalf of the 1st respondent during the years 2008 and 2009, are hereby expunged from the record. I do further direct that a warrant of arrest do issue against the said Daniel Mutisya Ngala to appear before this Court to show cause as to why he should not be committed for contempt of Court pursuant to Section 31 (2)a of the Advocates Act.

8. With regard to the prayer to grant the appellant liberty to sell motor vehicles KAS 535Y and KAW 143D, in view of the fact that service was effected on the incompetent firm of Mutisya Ngala & Co. Advocates, I direct that the 1st respondent be served personally with the application dated 11th May, 2009 and that he be given an opportunity to respond before the Court can make further orders.

Those shall be the orders of this Court.

Dated and delivered this 22nd day of July, 2009

H. M. OKWENGU

JUDGE

In the presence of: -

Mbaluto for the appellant/applicant

Advocate for the respondent, absent