



Z.N. GATHAARA

T/A GATHAARA & CO. ADVOCATES.....APPELLANT/APPLICANT

Versus

ADVOCATES COMPLAINTS COMMISSION.....RESPONDENT

RULING

On 17th July 2006, Justice Mutungi was to hear an application by Notice of Motion dated 23rd June 2006 when Counsel for the Respondent Dr. Kipkorir prevailed and had his Preliminary Objection heard on that day instead of the Notice of Motion. At the end of the hearing, Justice Mutungi reserved the ruling to a date to be given on notice but by the time the learned Judge retired from the Judiciary he had not written and delivered that ruling. The Hon. The Chief Justice therefore allocated to me the case for the purpose of writing and delivering the ruling and that is what I am doing by this ruling.

This case is an appeal in this court numbered 145 of 2006 and the parties, from the Petition of Appeal dated 10th March 2006 **seem to be** as follows:

Z.N. GATHAARA T/A Z.N. GATHAARA & COMPANY ADVOCATES.....APPELLANT

versus

I have used the words “**seem to be**” because more perusal of filed documents would reveal that sometimes some parties are not maintained, like for example, in the Notice of Motion dated 23rd June 2006 where the Respondent is shown as “**KIPKORIR TITOO & KIARA ADVOCATES**” for the preliminary objection to revert to the format in the Petition of Appeal.

In any case, the main prayer in the Notice of Motion was for a stay of **“The Committee’s Order of 6th February 2006 for deposit of Kshs.600,000/= with the Law Society of Kenya..... pending hearing and determination of theAppeal.”** That Notice of Motion is filed by the Appellant and at this stage I do not understand why the Respondent is different from the Respondent in the Petition of Appeal

The Preliminary Objection is filed by Kpkorir, Tadoo and Kiara Advocates indicating they are the Complainant (Not Respondent) and provisions of the law under which it is brought not revealed.

The said Preliminary Objection lists six grounds and is mainly against the appeal itself and only subsidiary against the Notice of Motion.

Looking at the grounds on the basis of which the Preliminary Objection is brought in the light of filed documents and the submissions recorded during the hearing of the Preliminary Objection, it seems to me that the Preliminary Objectors are wrongfully raising in the Preliminary Objection, matters or issues which should properly be raised and canvassed during the preparation and/or hearing of the appeal. In this Preliminary Objection for example, how is this court to properly decide whether the Petition is totally defective or that the substratum of the Petition fell away when the Appellant’s suit in **NBI HCCC NO. 206 OF 2005 (MILIMANI)** against the Complainant was dismissed, or that the “**PETITION**” (the Appeal?) is not maintainable in law and in fact?

Further, the Preliminary Objectors should come out in a clearer way. Are they objecting in the Notice of Motion dated 23rd June 2006? Are they objecting in the Petition of Appeal?

Further still, and this looks at all those claiming to be parties in the matter in all the proceedings:-

1. Against who are the court orders to be granted?

And

2. For who or in whose favour are the court orders to be granted?

With all the foregoing in my mind, the Preliminary Objection herein dated 12th July 2006 is now dismissed and each party to bear its own costs of the said Preliminary Objection.

Dated this 16th day of October 2009.

J.M. KHAMONI

JUDGE

Present:

Mr. Wandaka for the Applicant

M/s Shalaka for the Respondent

Court Clerk: Florence