



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

Misc. Appli. 395 of 2008

REPUBLIC.....
APPLICANT

V E R S U S

THE DISCIPLINARY COMMITTEE OF

THE LAW SOCIETY OF KENYA
RESPONDENT

EXPARTE: LEO MASORE NYANG'AU

R U L I N G

This is a Chamber Summons dated 2nd July, 2008, filed by M/S Nyakundi & Company advocates on behalf of the ex-parte applicant Leo Masore Nyanga'u. It was filed under certificate of urgency. It seeks for a number of orders, the substantive prayer of which are prayers 2, 3, 4 and 5. The said prayers are as follows-

1. *THAT the Honourable Court be pleased to grant leave to the ex-parte applicant to apply for an order of mandamus, prohibition and certiorari directed against the Disciplinary Committee of the Law Society of Kenya, prohibiting the said committee from hearing, or continuing to hear, Disciplinary Cause No. 37 of 2008. Ann Nyanchama Ombuna -Vs- Leo Masore Nyang'au t/a Masore Nyang'au & Company advocates.*
2. *THAT the Honourable Court be further pleased to issue an order of certiorari to remove the said proceedings in Disciplinary Cause No. 37 of 2008: Anne Nyanchama Ombuna -Vs- Leo Masore Nyang'au t/a Masore Nyang'au & company advocates to the High Court for the purposes of quashing them.*
3. *THAT the grant of the said leave to operate as a stay of the decision of the Disciplinary Committee in the said Disciplinary Committee Cause No. 37 of 2008: Anne Nyanchama Ombuna -Vs- Leo Masore Nyang'au t/a MASORE NYANG'AU & Company Advocates.*
4. *THAT the ex-parte applicant do deposit with this court a sum of Kshs.1 million within a reasonable period the court may order.*

The application has grounds on the face of the Chamber Summons. A verifying affidavit was filed which annexed several documents and correspondence. Also, a statutory statement was filed, which *inter alia*,

listed the facts and grounds on which reliefs are sought. Notice to the Registrar was filed on 1st July, 2008.

The application was heard ex-parte. Counsel for the ex-parte applicant Mr. Nyakundi made submissions before me. Mr. Nyakundi submitted that the issue herein related to fees between advocates and client which was wrongly before the Disciplinary Committee of the Law Society. Counsel submitted that section 60(7) of the Advocates Act, provided allowed advocates to file bills of costs for taxation. Counsel contended that the section provided that if a matter related to taxation, was before the Disciplinary Committee, then same will be adjourned. However, in the present case, the Disciplinary Committee irregularly ordered the applicant to pay a deposit of Kshs.1 million. Counsel contended that the applicant was ready and willing to deposit the said Kshs.1 million in court, as it was after Counsel asked for stay orders.

I have considered the application. At this stage, I am not required to go into the substantive merits of the application. The applicant is however required to demonstrate a sufficient interest and a prima facie arguable case. In my view, considering all the facts before me, I come to the conclusion that the applicant has demonstrated a sufficient interest and a prima facie arguable case. There is a complaint that requires investigation by this court. I will grant the leave requested to file Judicial Review proceedings.

The applicant has also asked for a stay of the decision of the Disciplinary Committee's decision in Disciplinary Committee cause No. 37 of 2008, as well as an order that the applicant do deposit the amount of Kshs.1 million with this court. I will not grant those prayers.

Firstly, from the letter dated 12th June, 2008 from the Law Society of Kenya, the applicant was reminded of a decision to adjourn the matter made on 5th June, 2008. He was required to deposit the amount of Kshs.1 million by 1st July, 2008. The applicant, apparently knowing this merely filed Notice to the Registrar on 1st July, 2008, and filed this application on 2nd July, 2008. The second reason why I will not grant a stay or order deposit in court is that the applicant has not demonstrated irreparable or substantial loss if he makes deposit ordered. On the face of it, he appears to be holding Kshs.2 million which belongs to a client, and he does not deny so. He has no colour of right to hold the same, as that money does not belong to him, as payment has been demanded by the client. That amount is for less than the Kshs.1 million ordered to be deposited. Though he claims to have filed a bill of costs, the said bill of costs was dated 9th June, 2008, after the decision of the Disciplinary Committee on 5th June, 2008.

For the record, I wish to state that prayer 3 of the application cannot be granted at this stage. That will have to await the decision in the main motion.

Consequently, I order as follows-

1. *I grant prayer 2 of the Chamber Summons. The main motion will be filed within 21 days from today.*
2. *I decline to grant prayer 3 of the Chamber Summons as it is premature.*
3. *I decline to grant prayer 4 and 5 of the Chamber Summons.*
4. *Costs in the cause.*

Dated at Nairobi this 7th day of July, 2008.

GEORGE DULU

JUDGE.