



REPUBLIC OF KENYA

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

Misc. Civ. Appli. 430 of 2008

CHARLES LUTTA KASAMANI..... APPLICANT

V E R S U S

THE DISCIPLINARY COMMITTEE..... RESPONDENT

R U L I N G

Before me is a Chamber Summons dated 16th July, 2008 filed on the same date by R.H. Wanga & Company advocates on behalf of the applicant Charles Lutta Kasamani. The respondent is named as the Disciplinary Committee (*of the Law Society of Kenya*). The application was brought under Order 53 rules 1 and 2 of the Civil Procedure Rules and Section 8 and 9 of the Law Reform Act and all enabling provisions of the law. The orders sought are that-

1. The applicant be granted leave to apply for Judicial review and specifically for orders –

(a) That an order of **CERTIORARI** do issue to remove into the High court and quash the decision of the Disciplinary Committee dated 12th June, 2008 dismissing the applicant's application for review of its orders dated 4th September, 2006 and effected on 17th September, 2007 striking the applicant off the Roll of Advocates.

(b) That an order of **PROHIBITION** do issue prohibiting the Disciplinary Committee from transmitting its decision and or recommendation to the Chief Justice.

(c) That an order **MANDAMUS** do issue

compelling the Disciplinary Committee to recommend to the Chief Justice to restore the name of the applicant to the Roll of Advocates.

2. That the grant of leave to apply for orders of certiorari and prohibition do operate as a stay of the orders of the Disciplinary Committee until the hearing and final determination of the application for certiorari and mandamus.

3. That such other or further orders be granted as the court shall deem fit.

4. That costs of the application be provided for.

The application was filed with a verifying affidavit sworn on 16th July, 2003 (2008) by the applicant **CHARLES LUTTA KASAMANI**. It was also filed with a **STATUTORY STATEMENT**. It is

deponed in the verifying affidavit that the applicant was struck off the Roll of Advocates on the 4th September, 2006 which order was effected on the 17th September, 2007. That on 12th June, 2008 the respondent dismissed the applicant's application for review. It was also deponed in the same affidavit that in addition to being struck off the Roll of Advocates, the applicant was ordered to reconstitute a sum of Kshs.29,687,487/=. It was also deponed that the complainant (***a client of the applicant***) had filed Nairobi HCCC No. 540 of 2000 and caused the attachment of 5 properties belonging to the applicant. It was also deponed that the decision to shut out the applicant from practice, the applicant's effort to recover Kshs.36,000,000/= owed to the applicant by United Insurance Company Ltd. in Kisumu HCCC No. 25 of 2005. It was further deponed that the applicant was willing to make proposals for repayment of the Kshs.29,687,484/=.

Several grounds for the application were listed in the **STATUTORY STATEMENT**. Among them is the ground that the dismissal of the applicant's preliminary technical objections out of hand leading to the conviction was unfair, oppressive and harsh, and that the order shutting the applicant out of practice was an abuse of the powers of the Committee as it jeopardized the applicant's ability to recover the sum of Kshs.36,000,000/= owed by the United Insurance Company Ltd; and also that the orders of the respondent and the recovery proceedings by the client pursuant to the judgment in Nairobi HCCC No. 540 of 2000 filed by the client against the applicant offended the principles of double jeopardy.

Several documents were filed with the verifying affidavit and the **STATUTORY STATEMENT**. The documents include copy of the proceedings and ruling of the Disciplinary Committee of the Law Society of Kenya.

The applicant's Counsel Mr. Wanga made submissions before me in support of the application. Counsel submitted that the applicant had already been struck off the Roll of Advocates. Counsel submitted that the applicant stood to suffer immensely if leave to file Judicial Review proceedings and stay orders were not granted. Counsel submitted that the Disciplinary Committee had dismissed a request to review the orders for striking out the applicant from the Roll of Advocates. Counsel submitted that the Law Society of Kenya did not stand to suffer any prejudice if stay orders were granted. Counsel emphasized that the applicant had come to court without delay.

I have considered the application, documents filed and submissions of Counsel for the applicant. Having considered all the facts before me, I am of the view that this is a borderline case with regard to a *prima facie* arguable case. At this stage however, I am not required to go to the merits of the substantive matters to be considered for Judicial Review. In Judicial Review proceedings, it is also preferable to give applicants a chance to be heard fully, as well as the other parties. I find that the applicant has a sufficient interest in the subject matter. I will grant leave to file Judicial Review proceedings.

I will however, not grant stay orders. This application appears to arise from a decision of the Disciplinary Committee in a ruling delivered on 12th June, 2008. That ruling merely declined to review orders of the Disciplinary Committee dated 4th September, 2007. The applicant is not specific on what orders he requests this court to stay, so that the court can be in a position to consider the merits or otherwise of the requested stay.

In addition, as disclosed by the applicant, there are pending civil cases, which appear to be related to the matter herein, which are pending in the High Court.

Clearly, I am not able to stay orders made on 4th September, 2007 now in September, 2008. I am not sure how far those orders have been implemented. It will be either an exercise in futility or an exercise that will cause more confusion than save a situation, taking into account that there are other parties involved such as the clients of the ex-parte applicant, and possibly the Registrar of the High Court, who are not parties in the present application. I decline to grant stay orders.

For the above reasons, I order as follows-

1. *Leave be and is hereby granted to the applicant to file Judicial Review proceedings for certiorari, prohibition and mandamus as requested in prayer 1 (a), (b) and (c) of the application. The main motion will be filed within 21 days from today and will be served on the applicant's clients and the Registrar of the High Court, in addition to the respondents.*

2. *I decline to grant stay orders.*

3. *Costs will be in the cause.*

Dated and delivered at Nairobi this 19th day of September, 2008.

GEORGE DULU

JUDGE.

In the presence of-

Mr. Wanga for the applicant