

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

Misc. Civ. Appli. 40 of 2008

REPUBLIC..... APPELLANT

V E R S U S

THE LAW SOCIETY OF KENYA DISCIPLINARY COMMITTEE.....RESPONDENT

R U L I N G

This is a Chamber Summons dated 1st September, 2008 filed under Order 53 rule 1 (1), (2) and 94) of the Civil Procedure Act (**Cap. 21**). It seeks for the following substantive orders, that-

Ø Leave be and is hereby granted to the Applicant to apply for and file an application for orders of certiorari to quash the proceedings, judgment and all orders made by the Law Society of Kenya Disciplinary Committee in case No. 209 of 2007.

Ø The grant of leave (in above) do and hereby operate as a stay of the said proceedings, judgment and all orders made by the Law Society of Kenya Disciplinary Committee in case No. 209 of 2007 such judgment and orders having been made or issued on the 28th day of April, 2008.

Several grounds were given on the face of the Chamber Summons. A verifying affidavit and a statement were filed. Before this present application was filed, an application dated 19th July, 2008 seeking similar orders was filed. It is not known whether that previous application was withdrawn or dismissed. I will mark that application dated 19th July, 2008 as overtaken by events and dismiss the same.

Mr. J.K. Mwangi, for the ex-parte applicant made submissions before me with regard to the application dated 1st September, 2008. Counsel submitted that a decision was made by the Disciplinary Committee of the Law Society of Kenya without the applicant being heard, as in fact, the applicant was sick and bedridden. Therefore counsel argued, there was justification for the court to grant leave and stay.

I have considered the application and submissions of counsel for the applicant. I find that the applicant has a *prima facie* arguable case. I will grant the leave to file Judicial Review Proceedings.

As for the request for stay, I will not grant the same. The decision complained of was made in April 2008. It will serve no purpose at this time to grant a stay. What the applicants counsel can do, which is the normal practice in Judicial Review matters, is to fast track the hearing of the main motion.

Consequently, I order as follows-

- 1. Leave is hereby granted for the applicant to file Judicial Review proceedings for certiorari as requested. The main motion will be filed within 21 days from today.***
- 2. I decline to grant stay.***
- 3. Costs in the cause.***

Dated and delivered at Nairobi this 6th day of October, 2008.

GEORGE DULU

JUDGE.

In the presence of-

J.K. Mwangi for applicant - absent