



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

Civil Case 817 of 2002

1. Constitutional and Judicial Review Division
2. Subject of main suit – Judicial Review
3. Civil Practice and Procedure
 - a) Application to strike out the whole of the Judicial Review Proceedings.
 - b) The advocate who filed the Judicial Review Proceedings had been appointed to the High Court bench as a Judge.
 - c) At the time the proceedings was field the advocate held no Practicing Certificate.
 - d) That between 4-10-2001 to 23-10-2003 when the Hon. Judge was appointed and subsequently retired, he had no authority to file proceedings.
4. Held
 - a) an advocate who files proceedings without a practicing certificate the said proceedings are null and void and must be expunge from the records
 - b) an advocate who is appointed a Judge of the High Court of Kenya
magistrate in the Kenya courts must wind up their practice where they are the sole proprietors.
 - c) No pleadings is permitted to be filed nor work undertaken that would mainly be done by an advocate whiles on the bench.
5. The Judicial Review is accordingly struck out with costs to the Respondents.
6. Case Law – Nil
7. Advocates

Ouna Mene for – Ex Parte – Applicant – absent

C.N. Ngala for (Mang'erere Ngisa & Company Advocates

REPUBLIC.....PLAINTIFF

VERSUS

SENIOR CHIEF (KAWANGWARE LOCATION)

(C.W. NYAMISA).....DEFENDANT

EX PARTE: PETER MURIITHI KIMUHU

RULING

1. Background

1. The main suit herein is a Judicial Review. The Ex Parte applicant one Peter Mureithi Kimuhu was questioning the role of a chief rulings issues certain orders that effected his litigants in a disputes between him and his sister and other members of their family. The dispute concerned the rent procedure from property on LR Dagoretti/Riruta/444 in the Kawangware area.

2. On the 19 July, 2002 the firm of Ouna & Company Advocates filed an application by way of a Certificate of Urgency together with Judicial Review proceedings to quash the orders of the court. Leave to file such proceedings was granted by the high Court (Hayanga J. 22-7-2002) and this matter was mentioned before Rimita J. (14-10-2002) Waki J. 23-3-2006 and Nyamu J. (2-5-2006). On the 5 February 2007 the file was placed before the Hon the Chief Justice under the administrative powers that he holds and correctly so to follow due process was directed that the Judicial Review be heard before me.

3. On the day set down for hearing being 22-3-2007, the issue of representation arose the applicant was absent. The Respondents argued that this matter be struck out as M/s Ouna & Company Advocates no longer exists.

II. REPRESENTATION

4. The Court gave the Respondents time to establish the status of M/s Ouna & Company Advocates. They returned to this court on 15-5-2007 with the following information.

i) That the firm of M/s Ouna & Company Advocates had a sole proprietor known as Lawrence Ouna.

ii) He last took out a practicing certificate in the year 2001.

iii) That on 4-10-2001 the said Lawrence Ouna was appointed a Judge of the High Court of Kenya and retired as a Judge on 23-10-2003.

iv) That the Judicial Review application was filed on the 19th July 2002 long after the Hon. Judge was sitting on the bench.

v) That between 4-10-2001 the day of appointment on 23-10-2003 the day the Hon. Judge recorded that he had no authority to file any proceedings in court.

vi) The Respondents pray to strike out this Judicial Review.

III. Findings

5. An advocate of the High Court of Kenya who files proceedings without a practicing certificate does so at his peril. The said proceedings are null and void and must be expunge from the record.

6. An advocate of the High Court of Kenya who is appointed a Judge of the High Court or an advocate who is appointed to the bench as a magistrate must wind up their practice where they are the sole proprietor.

7. That no pleadings is permitted to be filed not more undertaken as an advocate nor work normally done as an advocate should be done whilst on the bench. This applies to lawyers practicing in the said firm as employees.

8. I hereby allow the application to struck out the Judicial Review which accordingly do. The Judicial Review stands struck out with costs to the Respondents.

Dated this 16th day of May, 2007 at Nairobi.

M.A. Ang'awa

JUDGE

Advocates:

Ouna Mene for – Ex Parte – Applicant – absent

C.N. Ngala for (Mang'erere Ngisa & Company Advocates

C.O. Oyula for Attorney General