REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

Misc Civ Appli 29 of 2005

GEORGE PHILIP M. WEKULO ....APPLICANT

V E R S U S

THE LAW SOCIETY OF KENYA ....1ST RESPONDENT

THE ATTORNEY GENERAL ....2ND RESPONDENT

R U L I N G

The Applicant, George Philip M. Wekulo, sought in his exparte Chamber Summons application dated 24.5.2005, leave to apply for an order of certiorari to bring into this court for quashing the decision of the Respondents, the Law Society of Kenya Disciplinary Committee made on 18-2-2005. He also sought an order that the leave sought do operate as a stay of that decision. The application was premised on order LIII Rule 1(2) & (3) of the Civil Procedure Rules.

In the verifying affidavit filed along with the application, the applicant averred that although he was aware of the Disciplinary cause against him, he was not invited to attend its hearing which resulted in his being struck off the role of advocates. The minutes of the LSK Disciplinary Committee in which the decision sought to be quashed was made were not annexed to the verifying affidavit. Instead, a newsletter by LSK issued in April 2005 reflecting the report of the said decision was annexed. A letter dated 24-11-99 addressed to the Applicant through the latter's postal address No.2233, Kakamega by the Secretary of LSK was attached to the application but was not referred to in the verifying affidavit as an annexture.

The issue for my decision in this application is whether the applicant has made out a prima facie case for leave to be granted. In the seminal statement made in ***R. v Electricity Commissioners (1924) 1 KB 171,*** Lord Atkin stated that "*whenever any person or body of persons has legal authority conferred by legislation to make decisions in public law which affect the common law or statutory rights of other persons as individuals, it is amenable to the remedy of judicial review of its decision either for error of law in so acting, or for failure to act fairly towards the person who will be adversely affected.*"

Section 60(1) of the Constitution has conferred on this court unlimited original jurisdiction in Civil and Criminal matters in addition to any other jurisdiction and powers that may be conferred on it by the Constitution itself or any other law. Indeed, under Section 123(8) of the Constitution, this court is entitled to exercise jurisdiction in relation to any question whether any person or authority has exercised its functions properly and in accordance with the Constitution or any other law. It is Section 8(2) of the Law Reform Act, Cap 26 of the laws of Kenya that has vested in this court Power to make orders of mandamus, prohibition and certiorari in the same manner in which the High Court in England does, by virtue of the provisions of section 7 of the Administration of Justice (Miscellaneous Provisions) Act, 1938 of the United Kingdom. But the Kenyan judiciary does not have to be a mimic and it is time legislation was put in place in this branch of the law. Jurisprudential development in this branch of the law does not

have to tag behind English practice. It ought to be tailored to suit our own conditions, ideals and aspirations. This is not to say that we cannot borrow a leaf from relevant experiences of others.

The Applicant indicates that he was not given an opportunity to be heard before the decision striking his name from the roll of Advocates was made. Judicial review, I might add, is concerned with public rights and decision making process. It is not concerned with private rights or merits of decisions of interior tribunals or bodies. Where a decision is wrong, the proper course is to challenge it through an appeal. But where the decision is made in violation of the rules of natural Justice, or where there was bias, bad faith, or the decision was irrational and unreasonable, or took into account irrelevant considerations or omitted relevant considerations thus rendering the decision making process wanting, such decision is amenable to judicial review no less than if the authority concerned failed to act within the law. But, this court will not be concerned whether the authority concerned made a good decision or not providing that the decision was authorized by law and the individual was given a fair treatment.

In the instant application, the Applicant alleges that he was not given the right to be heard. Whether this is the case is a matter of evidence. He alleges therefore that the rules of natural justice were violated in the making of the decision striking his name from the Roll of Advocates.

This is a matter that needs to be heard on merit. On the face of it, there appears to be a prima facie case made out and for that reason I shall grant the applicant leave to apply for an order of certiorari. I hereby do so.

As to whether the leave herein granted should operate as a stay, the decision sought to be quashed has already been implemented and the applicant's name has been removed from the roll of advocates. If the applicant is eventually successful in having the decision quashed, his name shall be restored on the Roll of Advocates. There is not at the moment a decision that can be stayed because the decision to strike his name has been implemented by removal of the Applicant's name from the Roll of Advocates. It is not possible now to make an order to restore his name on the roll of Advocates. In short, there is nothing to be stayed.

I direct that the applicant shall file the Notice of Motion within twenty one (21) days and serve it upon the Respondent and any interested party within 14 days of filing.

Dated at Kakamega this 17th day of June, 2005.

G. B. M. KARIUKI

J U D G E