

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 507 OF 2003

RAPHAEL KAVAI MAITHA.....1ST APPLICANT

JOYCE MUTIO MUTAU.....2ND APPLICANT

JAMES NJUGUNA MIIRA.....3RD APPLICANT

EUNICE NJERI KARIUKI.....4TH APPLICANT

VERSUS

JAYS SYNCATE LTD.....1ST RESPONDENT

LAKE VIEW DEVELOPMENT CO. LTD.....2ND RESPONDENT

BELGO HOLDINGS LIMITED.....3RD RESPONDENT

JOSEPH S.M. MAINA.....4TH RESPONDENT

RULING

The application dated the 17th day of May 2004 is to strike out the documents enumerated in prayer 2 of the Application. The reason is that Mr. Getanda the advocate on record filed a notice of appointment of advocate dated the 30th day of October 2003 and did not have a practicing certificate on that date. In answer, at my questions, Mr. Getanda agreed that he did not obtain a practicing certificate in 2003 until 1st Day of December 2003.

Mr. Ochieng Oduol for the applicant relied on the case of Orao-Obura Vs Martha Koome Civil Appeal No 146 of 2000 in which the Court of Appeal struck out a Memorandum of Appeal on the ground that the advocate who did so did not have practicing certificate. The learned Court of Appeal held that under Sec 9 of the Advocates Act. The absence of a practising certificate meant that the person filing the Memorandum of Appeal was unqualified and as such he had no right to file the appeal, which should therefore be struck out.

Mr. Getanda submitted that the absence of the practicing certificate was an irregularity, which could be cured. I find this a surprising submission as the definition of an unqualified person is one not qualified under S 9 of the Advocates Act which Mr. Getanda was not at the material time and under Section 31 of the Act no unqualified person can act as an advocate as therein specified and shall be deemed to be in contempt, if he so acts. Mr Oduol relied on the case of ***Belgo Holdings Limited Vs Akber Abdullah Kassam Esmail HCC 244 OF 2004*** in which Lenaola J found that Mr. Getanda in that case not having a practicing certificate at the material time ordered the pleadings filed in that case be struck out. The case of ***Njagi V Kihara E.A.L.R [2001] 158*** was relied on by Mr. Getanda in which Mulwa J holds a different view and that pleadings and documents file by an unqualified person should not be expunged from the record as it would hurt innocent parties. Sec 31 of the Advocates Act provides that any person who contravenes the Section shall be incapable of maintaining any suit for costs in respect of anything done by him in the course of so acting. The client therefore should not be charged for what was done contrary to the section.

If the document are allowed to remain on the record which an unqualified person files if would be condoning contempt of court and would also render useless the provisions of the Section. I agreed the decision of Lenaola J in the matter.

In the result Mr. Getuanda not having a practicing certificate was unable to come on record as an advocate by filing a notice of appointment. If he was not on record anything he did thereafter would have been lawful or valid. In the result I allow the application as prayed with costs to the Applicant

Dated and delivered at Nairobi this 18th day of October 2004

P.J. RANSLEY

JUDGE