



**REPUBLIC OF KENYA**  
**HIGH COURT OF KENYA**  
**AT EMBU**  
**MISC CIVIL 74 OF 2004**

**JAMES RIKA .....APPLICANT**

**VERSUS**

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

**THE ADVOCATES DISCIPLINARY COMMITTEE.....2ND RESPONDENT**

**RULING**

1. This is an Application for leave to institute proceedings for an Order of Certiorari and an Order of Prohibition under Order 53 Rules 1 (1) (2) (3) and (4) of the Civil Procedure Rules.

2. The Applicant, James Rika is an Advocate of this court and he appeared to argue his Application aforesaid under Certificate of Urgency. The urgency was that the hearing of his disciplinary case would be held on 6.12.2004. His apprehension and sense of urgency is necessitated by that notice which sadly was not exhibited anywhere in the Supporting Affidavit. Nonetheless, I took his word for it and certified the Application as urgent and proceeded to hear it

. 3. As the Applicant had filed the Notice to the Registrar pursuant to Order 53 Rule 3 on the same day that the Chamber Summons was filed, I sought an explanation from the Applicant. He had no cogent explanation save that he admitted having misread the Rule. Again, I gave the Application a lifeline by invoking the provisions of the Proviso to Order 53 Rule 3 and excused the omission.

4. The genesis of this matter is that on 17.5.2004, one George Mong'are Kegoro, Secretary of the Law Society of Kenya swore an affidavit making a complaint against the Applicant to the Advocates Disciplinary Committee. The issues for determination were whether the Applicant procured from his client in **H.C.C.C 68/1995** (Nyeri) ,Ksh.20,000/= to pay a certain Judge of the High Court to induce that Judge to render a favourable ruling in the suit. Further, whether therefore the Applicant is guilty of corruption and if so, what punishment should be meted to him.

5. The Applicant having received notice of the charges against him appeared before the Advocates Disciplinary Committee and in his own words, **“sought the disqualification of the 2nd Respondent from proceeding with the matter which Application was refused.”** (Paragraph 21 of the Supporting Affidavit). In effect he sought that the Committee should not hear and determine the issues that took him there. I have seen a copy of that Ruling (annexture JR 6). It makes reference to a Section 56 (of I believe, the Advocates Act) which is the Section that confers on the Chief Justice and Judges power to deal with cases of misconduct or offences by Advocates when they are before the Chief Justice or before any judge. The Ruling was to the effect that Section 56 does not oust the jurisdiction of the Committee (which is itself created by Section 57 of the Advocates Act). Being unhappy that the objection was not sustained, the Applicant did nothing save to seek certain documents from the Secretary of the Law Society which request was denied vide a letter dated 17.8.2004. I see no other serious action by the Applicant until he

filed this Application.

6. He now argues that he requires leave to institute Judicial Review Proceedings because;

- i) the decision to refer him to the 2nd Respondent was in breach of rules of natural justice and fairness.
- ii) the Secretary of the Law Society is also the Secretary of the Disciplinary Committee.
- iii) members of the Council of the Society also sit in the Committee.
- iv) the current Solicitor General and the Attorney General have an interest in the matter and yet both are members of the Committee albeit in alternate capacities.
- v) the actions of the Respondents are driven by certain political considerations.

7. I am asked therefore for these reasons to grant leave and also order that the leave so granted do operate as a stay of the proceedings in **Disciplinary Cause No. 166 of 2004.**

8. The Supporting Affidavit is a rumbling 31 paragraph document. It traces the history of the Government of Kenya since January 2003 with specific inclination to matters relating to the Judiciary and the Law Society of Kenya. (Paragraphs 3-9). Paragraphs 10, 11 and 12 relate to the complaint of corruption against the Applicant. Paragraphs 13-16 relate to the role of the Committee, the duality of its membership, the apparent unfairness in its proceedings and lack of respect for rules of natural justice. Paragraph 17 is a deposition that the Attorney-General was the Defendant in **Nyeri H.C.C.C 68/1995** and that enhances his bias. Paragraph 18 lists, Wanjuki Muchemi, President Mwai Kibaki, Isaiah Mathenge and the Applicant's client in that suit as being at the time of the hearing of the suit leaders of a political party which supported his then client, now his accuser at the Disciplinary Committee. Bias is read into the fact that some of the named are now in Government. Paragraph 21-31 are all allegations of lack of equality before the law, acts of lack of independence of the Committee which is said to be in the talons of the Society, that there is no offence called corruption in the Advocates Act, that Magistrates who were called corrupt are now practising law, and the unfairness of the whole system which is deliberately bending towards punishment of the Applicant.

9. I have set out these matters in detail because in my very respectful view they clouded the real issues for determination in the Application before me. To bring in assertions of real and imaginary political machinations by all and sundry and especially non-parties to this Application is to stretch imagination a little too far.

10. I have seen the membership of the Disciplinary Committee which sat on 6.8.2004. The Chairman is listed as one Dr. G. Muigai. It is not the alternate Chairman, who is the Solicitor-General. The members are V.T. Awori and R.M Chubi. I have not seen the President, Isaiah Mathenge or any member of the Democratic Party. Granted, Wanjuki Muchemi, is the Solicitor- General and alternate Chairman of the Committee but where he does not sit, where even if true, is there evidence of bias on his part? It is said that he previously acted for the Plaintiff in the **H.C.C.C 68/1995** before the Applicant took over from him. So what? Does that make him biased towards an advocate who took over the matter? What is his interest in the matter?

11. What of the Attorney General? What if any is his interest in the matter? Granted, he is a member of the Committee but he did not sit when the Applicant was first heard and there are no indicators he would sit. Further, even if he was the unsuccessful litigant in the suit aforesaid, why would he now gang up with the successful litigant against that litigant's advocate who brought victory to the litigant and loss to the Attorney-General?

12. For these reasons, grounds (iv) and (v) above must fail as they are neither tenable, reasonable nor supported by any cogent or coherent evidence.

3.1415171813. Turning back to grounds (i) –(ii), there is no doubt that the Applicant has been referred to the Disciplinary Committee. He even attended the hearing on 6.8.2004 and made Submissions. I do not know the process under which he found himself there save for the Affidavit making the Complaint. It may or may not have been his right to be heard before the reference to the Committee and the Applicant has said little of it. There may or may not have been breach of the rules of natural justice and fairness. I don't know because again the Applicant spent time on matters extraneous than that important process. Ground (i) is therefore too wide and general to attract any sympathetic approach by this court

14. There may be something to be said about grounds (ii) above. The Applicant has however not shown what role the Secretary of the Law Society has in the proceedings of the Committee. He may or may not influence decisions but to my mind that duality of roles (as the Complainant and member of the Committee) may be the subject of investigation by way of judicial review (Section 58 (3) of the Advocates Act).

15. I do not know what ground (iii) was all about as the Applicant save for V.T Awori could not name any other member of the Law Society Council who also sits in the Committee. The Advocates who sit in the Committee are elected under Section 57 (1) (c) of the Advocates Act and these are not members of the Council.

16. The Applicant passionately argued his Application and in the course of doing so may have forgotten the simple but effective adage; a doctor cannot treat himself. Engrossed in his difficulty he did not hit the nail on the head. He waved to court, a book, **Judicial Review of Administrative Action** but did not once cite it. An extract in the court file was also not referred to at all. I have read it and have taken the issues raised at pages 576-582 in mind while rendering this decision.

17. Having so said, leave in Judicial Review matters is granted where there is a **Prima facie case** without going to the merits of the case. I have deliberately delved into the issues raised in the Applicant's Affidavit to discern if such a case can be gleaned from it. Not much came out of it but the duality of the roles of the Secretary of the Law Society as the person making the complaint and then sitting as Secretary of the Disciplinary Committee is not an idle question. However it is not so weighty as to stop the Committee from proceeding as the role has not been shown in the circumstances of this case to have caused the Applicant any injury on 6.8.2004 or 6.12.2004 or in the future.

18. Having so said, and for whatever it may be worth, I shall grant leave to institute proceedings for an order of Certiorari to quash the decision to refer the Applicant to the 2nd Respondent. I also grant leave to institute proceedings to prohibit the 2nd Respondent from proceeding with the **Disciplinary Cause No.166/2004**.

19. I decline to order that the leave do operate as a stay as I have shown that there is no cause to issue such orders and little has been demonstrated.

20. These are the orders in this matter.

Orders accordingly.

Dated and delivered in open court on this 1st day December 2004.

**I.LENAOLA**

**A.G JUDGE**

No appearance for Applicant

**I.LENAOLA**

**AG. JUDGE**