

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE 391 OF 2004

MENNO TRAVEL SERVICES LIMITEDPLAINTIFF

VERSUS

CO-OPERATIVE BANK OF KENYA LTD.....DEFENDANT

RULING

The Plaintiff's counsel filed the plaint herein on 16th July 2004. The Plaintiff's counsel did not have in force a practising certificate for the year 2004 until 11th August 2004.

The defendant by its Chamber Summon dated 8th September 2004 seeks the dismissal of the Plaintiff's suit in that it contravenes the provisions of the Advocates Act. The application is brought under Order 6 Rule 13 (1) (d).

Section 9 of the Advocates Act provides "no person shall be qualified to act as an advocate unless: -

- (a) he has been admitted as an advocate; and
- (b) his name is for the time being on the Roll; and
- (c) he has in force a practising certificate.

There is no doubt that the Plaintiff's counsel, Peter L. Onalo, was admitted as an advocate of the High Court of Kenya on 12th August 1974, what is clearly absent is a valid practicing certificate as at the time of filing the present suit.

Peter L. Onalo states that he paid for his practicing certificate on 3rd May 2004 but the issuance of the certificate took long. I accept Defendant's counsel's submission that what is material is the certificate and not the Law Society of Kenya receipt. I am persuaded by the ruling of my brother Justice I. Lenaola in the case of BELGO HOLIDINGS LTD – V – AKBER ABDULLAH KASSAM ESMAIL HCCC 244 OF 2004 that "...Section 24 of the Adv ocates Act Cap 16 of Kenya, every practising certificate shall bear the date when it was issued and shall be valid only from that date."

Mr. Onalo obviously was only entitled to practise as an advocate from the date of his practicing certificate and not before. Accordingly I do agree with the submissions of the defendant's counsel and I do hereby allow the application dated 8th September 2004 and accordingly the plaintiff's suit is dismissed with costs to the defendant. The defendant shall also have the costs of the application dated 8th September 2004.

Dated and delivered this 1st day of December 2004.

MARY KASANGO

AG JUDGE