



**Republic v Law Society of Kenya & 2 others; Njuguna (Exparte Applicant) (Judicial Review Miscellaneous Application E065 of 2025) [2025] KEHC 6885 (KLR) (Judicial Review) (21 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6885 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**JUDICIAL REVIEW**

**JUDICIAL REVIEW MISCELLANEOUS APPLICATION E065 OF 2025**

**RE ABURILI, J**

**MAY 21, 2025**

**IN THE MATTER OF: AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW ORDERS OF PROHIBITION AND CERTIORARI**

**AND**

**IN THE MATTER OF: THE ADVOCATES ACT, CAP 16 LAWS OF KENYA**

**AND**

**IN THE MATTER OF: THE LAW SOCIETY OF KENYA DISCIPLINARY TRIBUNAL**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**LAW SOCIETY OF KENYA ..... 1<sup>ST</sup> RESPONDENT**

**THE DISCIPLINARY TRIBUNAL ..... 2<sup>ND</sup> RESPONDENT**

**JOSEPH MUMO KIVAI ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**PAUL CHUCHU NJUGUNA ..... EXPARTE APPLICANT**

**RULING**

1. Before this Court is a Chamber Summons dated 18th March 2025, brought under Order 53 Rule 3(2) as well as sections 1A, 1B,3A and 6 of the Civil Procedure Rules and the Civil Procedure



- Rules respectively, and Sections 8 and 9 of the [Law Reform Act](#). The applicant also cites Articles 23,47,50,159,163 and 169 of [the Constitution](#).
2. The Applicant, Mr. Paul Chuchu Njuguna, a practicing advocate of the High Court of Kenya, seeks leave of court to apply for judicial review orders of: Prohibition, to restrain the Law Society of Kenya Disciplinary Tribunal from investigating and prosecuting a disciplinary complaint against him filed by Mr. Joseph Mumo Kivai's company Capstone Heights Realtors Limited for alleged professional misconduct; and Certiorari, to quash the Tribunal's decision to commence such disciplinary proceedings against the advocate.
  3. The grounds upon which the application is predicated are the same as the factual depositions contained in the verifying affidavit sworn by the advocate Paul Chuchu Njuguna on 18<sup>th</sup> march, 2025. As well as the statutory statement dated the same day.
  4. The applicant claims that he was served with the decisions of the 1<sup>st</sup> and 2<sup>nd</sup> respondents to the effect that they had reviewed a complaint filed by the 3<sup>rd</sup> respondent and that a prima facie case had been established against the applicant for him to take a plea in Disciplinary Cause No. 247 of 2024, which plea was scheduled for 24<sup>th</sup> March, 2025.
  5. The applicant claims that the 1<sup>st</sup> and 2<sup>nd</sup> respondents have unilaterally decided to prosecute him without giving him an opportunity to state his case which he terms as an arbitrary decision which offends the salient provisions of the [Fair Administrative Action Act](#) and Articles 47, 48,50,159,162 and 169 of [the Constitution](#).
  6. He then does on to state the facts giving rise to the intended prosecution which are, briefly, that on 6<sup>th</sup> October 2021, Kigwor Kenya Limited and Capstone Heights Realtors Limited entered into an agreement for sale of property LR. NO. 21072 situate in Kabete area at a consideration of KShs 330,125,600. The seller was Kigwor Limited while Capstone Heights Realtors Limited was the purchaser.
  7. A particular mode of payment was agreed upon and monies paid to the vendor's advocates, Ms Njuguna, Kahari and Kiai Advocates and the completion date agreed upon to be 120 days from the effective date.
  8. The payments were made, some outside the completion date but with extensions provided by the vendor at the purchaser's request. That the purchaser later defaulted and was reminded to pay up the balance but it did not heed hence the breach which led to a Deed variation dated 10<sup>th</sup> march 2022.
  9. That the purchaser then went mute until after nearly a year is when it resurfaced with a proposal for a special purpose vehicle to facilitate conclusion of the sale and later demanded for refund of KShs 66,025, 120 and that the dispute over this refund is pending before the ELC vide ELC Cause No. E296 of 2024 and that therefore the 2<sup>nd</sup> respondent cannot purport to entertain a similar dispute, it being subordinate to the High Court.
  10. That the 3<sup>rd</sup> respondent filed a complaint on 5<sup>th</sup> June 2024 and that the applicant was never given the opportunity to respond to the complaint until 17<sup>th</sup> march 2025 when he was served with the said complaint, contrary to Article 47 and 50 of [the Constitution](#).
  11. That had the 1<sup>st</sup> and 2<sup>nd</sup> respondents contacted the applicant before investigating the complaint and finding the applicant with a case to answer, then they would have known that there is a pending ELC matter over the same subject matter between the vendor and purchaser, thereby ousting the jurisdiction of the 2<sup>nd</sup> respondent from further investigating and prosecuting the applicant advocate hence the prosecution of the applicant is actuated by bad faith and that there is likelihood of conflicting decisions



- from the ELC and the Tribunal. Further, that his prosecution is intended to arm-twist the applicant to release the funds before the determination by the ELC, which is yet to determine as to who owes who since there is a counterclaim filed by the vendor.
12. That the prosecution of the applicant is subjudice the ELC matter and is in excess of jurisdiction.
  13. The respondents vehemently oppose the application for leave and filed replying affidavits
  14. The applicant filed a further affidavit sworn on 4th April 2025 maintaining his stance on sub judice, that the respondents want to tarnish his reputation, annexing the ruling on mandatory injunction rendered by Mogeni J in the ELC Case ordering for deposit of the claimed amount into a joint interest earning account to be held by both advocates, that he never held the money as an individual capacity but by the firm of advocates as stakeholder, that there is no client/ advocate relationship with the 3<sup>rd</sup> respondent's company hence the disciplinary case is malicious prosecution of the applicant as there is no evidence of professional misconduct.
  15. The applicant goes on and on defending his position and indeed, this appears like the main motion being determined on merit as opposed to the determination of the threshold for leave to be granted to apply.
  16. The parties argued the application orally on 8<sup>th</sup> April, 2025.
  17. Mrs Wambugu submitted for the applicant challenging the decision to charge the applicant before Disciplinary Tribunal because it is discriminatory, highly selective and intended to achieve an unintended purpose. That it is unconstitutional. That the affidavit of complaint acknowledges that the applicant is only a partner in the firm, that the complainant discriminated against the applicant partner hence the prosecution is an abuse of court process, amounts to unfair trial and calls for the court's interaction.
  18. That the address of service is not in the address for the affidavit of complainant and that there is a matter before ELC which has given directions. That leave is discretionary but that they had demonstrated that leave is merited and the leave to operate as stay.
  19. Mr. Mvuo responding for the 1<sup>st</sup> and 2<sup>nd</sup> respondents submitted relying on a replying affidavit of 3/4/2025 and contended that there was no prima facie case established because the jurisdiction of the 2<sup>nd</sup> Respondent is to hear complaints against the advocates.
  20. That there were notices of 11/6/2024 which gave the applicant herein 14 days to respond and another notice of 4/3/2025 which called him to plead hence no prejudice shall be suffered by him as the applicant can file a response and under Section 63 of the *Advocates Act*, the Tribunal can strike out the complaint.
  21. It was also submitted that the applicant has not exhausted the internal mechanisms under Section 60(4) of the *Advocates Act* and that the applicant has an opportunity to cross examine the complainant and if he is aggrieved by the decision, he can appeal under Section 62 of the *Advocates Act*, to the High Court.
  22. On stay, it was submitted that no harm shall be suffered by the applicant and that stay will interfere with statutory provisions to uphold integrity of the legal profession.
  23. Mr. Makau on behalf of the 3<sup>rd</sup> respondent submitted relying on the affidavit sworn by the 3<sup>rd</sup> Respondent to the effect that the threshold for leave is not met. That Joseph Mumo Kivai is not the complainant in the complaint, but only deposed an affidavit. Further, that the applicant is not a party to the ELC E296/2024.



24. It was submitted that the 2nd Respondent is mandated to monitor conduct of Advocates and that it invited the applicant to take plea and file a defence. Further, that the applicant can appeal against the prima facie case established by the 2nd Respondent, not by way of judicial review.
25. That the applicant is a partner in the law firm under Rule 5 of LSK General Regulations, 2020 hence he is the right party as he was the one handling the transaction. That the partnership is the legal entity but the actual advocate handling the transaction is the applicant.
26. In a rejoinder, Mrs. Wambugu submitted that the payment, drawing agreement for sale, variation was done by a partnership not the applicant. That the the affidavit of Florence Muturi & letter of LSK was copied to Joseph Mumo Kevai who was informed of the case. Counsel maintained that the applicant's rights are breached and that the 2nd Respondent is a creature of an Act. It must follow the Rule of Law.

### **Analysis and determination**

27. I have considered the chamber summons and the responses coupled with the oral submissions taking into account the detailed narrations by the applicant and the respondents in their responses.
28. At the leave stage of judicial review proceedings, the court is not required. nor is it permitted, to engage in a detailed examination of the merits of the intended application. The legal threshold at this stage is limited to determining whether the applicant has established a prima facie case that warrants the grant of leave. While the parties have placed before the court materials that invite a determination on substantive issues, the court must resist the temptation to engage with the merits of the matter at this preliminary juncture. The court is enjoined by law to confine itself strictly to the threshold question of arguability, without delving into contested facts or legal conclusions that properly fall for determination at the substantive hearing of the Notice of Motion, should the court find that the leave sought is deserved.
29. The requirement for leave under Order 53 of the Civil Procedure Rules serves as a critical procedural filter in judicial review proceedings. It is designed to achieve several interrelated purposes:

### **Preventing Abuse of Court Process**

30. Judicial review is a special remedy, primarily concerned with the legality of administrative action. By requiring an applicant to first seek leave, the court ensures that only serious and arguable claims proceed to full hearing. This prevents the judicial review jurisdiction from being invoked frivolously or as a substitute for ordinary appellate mechanisms.
31. In Republic v County Secretary, Turkana County Government & 2 others; Ekai (Exparte Applicant) [2024] KEHC 10023 (KLR), the court emphasized that the purpose of the leave requirement is to eliminate at an early stage any applications that are frivolous, vexatious, or hopeless, and to ensure that only cases fit for further consideration proceed to a substantive hearing.

### **Preserving Judicial Resources**

32. The leave stage enables the court to sift through applications and weed out unmeritorious or hopeless claims at an early stage. This promotes judicial economy and efficiency by allowing the court to allocate its limited time and resources to matters that disclose a prima facie case warranting further judicial inquiry.
33. In Republic v County Secretary, Tharaka Nithi County & 2 others; Mugwetwa (Exparte Applicant) [2022] KEHC 12596 (KLR), the court reiterated that the leave requirement is a statutory prerequisite



and not a mere procedural technicality, underscoring its role in ensuring that only deserving cases proceed to a substantive hearing.

### **Protecting Public Bodies from Unnecessary Litigation**

34. Public authorities and decision-makers, who are often respondents in judicial review matters, are shielded from the burden of responding to baseless claims unless the court is satisfied that there is an arguable case requiring their response. This maintains a balance between accountability and administrative efficacy.
35. In *James Gacheru Kariuki & 22 Others v Kiambu County Assembly & 3 Others* [2017] eKLR, the court held that the requirement for leave is a substantive legal requirement with a purpose beyond mere procedure, aiming to prevent unnecessary litigation against public bodies.

### **Early Judicial Oversight**

36. The leave stage allows the court to perform a preliminary oversight role, ensuring that the judicial review mechanism is engaged only where the grounds of illegality, irrationality, procedural impropriety, or legitimate expectation are properly invoked. This ensures that judicial review remains a remedy of last resort and is not trivialised.
37. In *Republic v Minister for Lands and Settlement & 2 others; Kipeno (Interested Party)* [2022] KEELC 3409 (KLR), the court emphasized that judicial review proceedings are special in nature and that the leave requirement ensures that only cases meeting the legal threshold proceed to a substantive hearing.

### **Ensuring Procedural Discipline**

38. The leave requirement imposes a discipline on applicants to present their claims with clarity, precision, and supporting material even at the initial stage. It compels litigants to distil the legal issues early and to demonstrate that the application is not speculative or premature.
39. In *Republic v County Secretary, Tharaka Nithi County & 2 others; Mugwetwa (Exparte Applicant)* [2022] KEHC 12596 (KLR), the court noted that the applicant's failure to seek the requisite leave under Order 53 of the Civil Procedure Rules rendered the application incompetent, highlighting the importance of adhering to procedural requirements.
40. In sum, the leave stage under Order 53 of the Civil Procedure Rules functions as a necessary procedural safeguard. It upholds the integrity of the judicial review process, ensures that only arguable cases proceed to full hearing and protects the court and parties from the strain of unnecessary litigation.
41. The question is whether the applicant has established a prima facie arguable case for consideration on merit at the leave stage.
42. The complaint giving rise to the disciplinary process was lodged by one the purchaser Capstone Heights Realtors Limited who was the purchaser in a land sale transaction. The Applicant herein acted as advocate for the vendor. The complainant paid to the Applicant the sum of Kshs 99,037,680.00 as a stakeholder, pending completion of the sale.
43. It is alleged that the sale was not concluded due to the vendor's failure to issue a completion notice as agreed. The complainant contends that the advocate, as stakeholder, ought to have refunded the funds upon the failure of the transaction. Instead, the Applicant allegedly invoked the forfeiture clause unilaterally and retained the full amount, including applying Kshs 33,012,560 as forfeited deposit.



44. The Applicant argues that there are pending civil proceedings before the Environment and Land Court, in which the purchaser is seeking a refund of the purchase price directly from the vendor. He further claims that the money was received not by him personally, but by his law firm and accuses the Tribunal of selective prosecution, since none of his partners have been charged. He also claims that he was not given a hearing before being asked to take plea.
45. The Tribunal on the other hand contends that upon receiving the complaint under Section 60(3) of the [Advocates Act](#), the Disciplinary Tribunal served the applicant with two notices before it evaluated the materials presented and concluded that a prima facie case had been established. It thereafter directed that the Applicant takes a plea before the Tribunal.
46. The Respondents' position in opposing the application for leave, argue that the Applicant has not made out a prima facie case for leave to be granted. They submit that the Disciplinary Tribunal is lawfully mandated to hear complaints of professional misconduct and that any defenses the Applicant wishes to raise, including the role of his partners or the pending civil case, as well as whether a prima facie case existed, can be raised within the Tribunal proceedings.
47. The Respondents further note that the existence of parallel civil litigation to which the applicant is not a party does not bar the Tribunal from proceeding in accordance with the [Advocates Act](#). Additionally, that the Tribunal's proceedings are disciplinary in nature, not civil or criminal and that any person aggrieved by its decision has a statutory right of appeal to the High Court under Section 62 of the [Advocates Act](#).
48. The third respondent as enjoined to these proceedings contends that he is not a party to the disciplinary proceedings and the pending ELC Civil suit although he was the deponent of the affidavits in support of the complaint and the suit for recovery of the deposit. Further, that it was the applicant who received the money and conducted the transaction for sale/purchase of land.
49. According to the Respondents, the Applicant is seeking to circumvent the statutory process by prematurely invoking judicial review before the Tribunal can consider the merits of the complaint.
50. Judicial review is not concerned with determining the actual merits of the decision or the innocence or guilt of the Applicant, save in exceptional situations but with the lawfulness, fairness, and procedural propriety of the decision-making process. This is well established in *Municipal Council of Mombasa v Republic & Umoja Consultants Ltd [2002] eKLR*.
51. The Advocates Disciplinary Tribunal is the statutory body empowered under Sections 58 and 60 of the [Advocates Act](#) to investigate and adjudicate complaints of professional misconduct against advocates. It has the jurisdiction to evaluate evidence, consider defenses and make appropriate determinations.
52. Since the Tribunal is the competent body mandated by law to handle such complaints, it is premature for the Applicant to seek to stop the Tribunal from undertaking its statutory function. The Court cannot intervene at this stage absent a demonstration of jurisdictional error, breach of natural justice, or procedural unfairness, none of which has been shown in this case.
53. The allegation that the applicant was not given an opportunity to be heard is neither here nor there because the complainant has not yet been considered and more so, he has not controverted the deposition by the respondent that he was summoned twice before the Tribunal finally served him with a notice to take plea upon which he came to this court to stop the taking of plea. As to whether his prosecution for alleged professional misconduct is selective prosecution of the applicant, simply because the money was received by the law firm is not sufficient ground for this court to stop the disciplinary process commenced by the 2<sup>nd</sup> respondent for reasons that in professional



- disciplinary proceedings, liability is generally personal. The complainant must prove that the specific advocate against whom the complaint is lodged personally engaged in professional misconduct or negligence. Law firms operate as partnerships, but disciplinary sanctions are directed at individual legal practitioners, not the firm as an entity.
54. In *Law Society of Kenya v Joseph Gathuku & Another* [2014] eKLR, the Disciplinary Committee emphasized that each advocate bears individual responsibility for their actions, and collective liability does not arise automatically by virtue of partnership. That position has not been overturned.
  55. Similarly, in *Republic v Advocates Disciplinary Tribunal & Another Ex Parte Apollo Mboya* [2019] eKLR, the High Court reiterated that proceedings must be grounded on clear evidence pointing to the involvement or culpability of the specific advocate named in the complaint.
  56. There is no prejudice in proceeding solely against the named advocate, provided the complaint identifies that advocate specifically, there is a factual basis linking the alleged misconduct to the advocate, and that the proceedings afford that advocate a fair opportunity to respond to the complaint. Thus, that is an issue which the Tribunal has jurisdiction to consider on merit and upon evidence being adduced, once it is raised by the applicant advocate.
  57. In *Andrew Ombati Ochoki v Advocates Disciplinary Tribunal & Another* [2021] eKLR, the court upheld disciplinary proceedings against a named advocates where the complainant had expressly identified them as responsible for mishandling client funds, rejecting the argument that other firm partners should have been included.
  58. The Advocates Disciplinary Tribunal (ADT) is bound to proceed only against the person named and served in accordance with its enabling statutes and rules. It cannot broaden its jurisdiction to other partners unless a formal complaint is lodged against all the other partners and due process is followed.
  59. Although the applicant claims that there is no client/ advocate relationship between him and the purchaser, it is not disputed that the purchaser paid the deposit money for the land transaction to the applicant's law firm to hold as stakeholder, a fact which the applicant readily admits in his own depositions on oath. The question of whether an advocate for vendor who received deposit of purchase price from the purchaser can be found to be culpable of withholding money is one that I will not delve further here as the parties will have the opportunity to fully ventilate the issue before the right forum.
  60. The Applicant's claims that there is a pending civil suit before the ELC where directions have been given and that therefore this matter before the Disciplinary Tribunal is sub judice or that he acted on behalf of a firm, are all matters that can and should be raised before the Tribunal itself in the normal course of proceedings.
  61. The existence of an appeal mechanism under Section 62 of the *Advocates Act* further reinforces the statutory path available to the Applicant, to ventilate his grievances should the Tribunal not accord him fair hearing as a right guaranteed by Article 50(1) of *the Constitution*, which matter the High Court on appeal is vested with jurisdiction to hear and determine.
  62. Further, if the advocate applicant herein believes that the 2<sup>nd</sup> respondent has made a decision to have him take a plea, the Act provides that a decision of the 2<sup>nd</sup> respondent is appealable to the High Court on points of law. He can still appeal to challenge the decision to discipline him for what he believes he is innocent. It is not for this Court to apply the yardstick for quashing criminal proceedings to this case, when the statute giving the disciplinary tribunal jurisdiction clearly provides for an avenue for challenging decisions of the Tribunal, and that is by way of an appeal.



63. To allow leave to apply for judicial review at this early stage would result in unnecessary interference with a lawful quasi-judicial process, and would in effect subvert the disciplinary framework established by statute. In other words, this court is not persuaded that the applicant has no other alternative lawful and effective remedy.
64. This court is also alive to the mandator statutory command under section 9(2) of the *Fair Administrative Action Act* which bars this court from entertaining judicial review proceedings where there is an established internal judicial or quasi-judicial or administrative mechanism for resolution of disputes. This, this court should not usurp the jurisdiction of the established institutions for resolving disputes until those disputes are ripe for judicial review. This Court's task is not to determine whether the complaint against the advocate is valid or whether he is guilty, but rather whether the Tribunal acted within its legal mandate and followed due process.
65. As earlier stated, the Disciplinary Tribunal is a statutory body established under the *Advocates Act* with exclusive jurisdiction to handle complaints of professional misconduct by advocates. Under Section 60 of the *Advocates Act*, any person may lodge a complaint with the Tribunal, and the Tribunal is empowered to summon, hear, and determine such complaints.
66. This Court aligns with the reasoning in Republic v Disciplinary Committee of the Law Society of Kenya ex parte Kamau Kuria [2005] eKLR, where it was held that judicial review is not a forum for contesting facts or guilt, but for interrogating the legality of process and jurisdiction.
67. The Court also notes that parallel civil proceedings between the vendor and the purchaser do not automatically oust the Tribunal's jurisdiction to deal with a complaint. In fact, the statutory framework anticipates that a complaint may involve issues that are also subject to civil litigation, and it is for the Tribunal to weigh those facts appropriately. That alone does not render its process unfair or unlawful. It would be wrong for this court to assume that the Tribunal will make a wrong decision and therefore it should be stopped from making any decision.
68. In this instance, it is not proper for this court to pronounce that the Tribunal has no jurisdiction simply because the buyer has sued the seller for refund of the purchase price, and that therefore the disciplinary proceedings against the advocate are sub judice.
69. The Applicant's argument that it was his firm, and not he individually, that received the money, is a factual issue that goes to the substance of the defense, and can be raised before the Tribunal itself. Similarly, the alleged selectiveness in charging him alone and not his partners is not, in itself, evidence of procedural illegality or excess of jurisdiction. The Tribunal will have the opportunity to hear evidence on all the issues raised by the advocate in these proceedings.
70. Moreover, the availability of an appeal under Section 62 of the *Advocates Act* further undermines the urgency or necessity of judicial review at this stage. The Applicant will have full opportunity to defend himself, and if aggrieved, to seek redress through appeal.
71. In the end, this Court finds that the Applicant has not demonstrated an arguable case or any exceptional circumstances warranting early judicial review intervention. There was no application for exemption from resorting from the alternative internal dispute resolution mechanisms or that those mechanisms are ineffective. The Tribunal must be left to act and act within its statutory mandate. The Applicant has not established illegality, irrationality, or procedural impropriety sufficient to meet the threshold for leave.
72. Accordingly, the Chamber Summons dated 18th March 2025 is dismissed.
73. I make no orders as to Costs.



74. This file is closed.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 21<sup>ST</sup> DAY OF MAY, 2025**

**R.E. ABURILI**

**JUDGE**

