



**Republic & another v Advocates Disciplinary Tribunal; Munyi
(Interested Party) (Miscellaneous Civil Application E152 of 2025)
[2025] KEHC 8534 (KLR) (Judicial Review) (17 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8534 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW**

MISCELLANEOUS CIVIL APPLICATION E152 OF 2025

RE ABURILI, J

JUNE 17, 2025

**IN THE MATTER OF: AN APPLICATION FOR
LEAVE TO APPLY FOR ORDERS OF CERTIORARI**

AND

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

AND

**IN THE MATTER OF: A DECISION BY THE ADVOCATES
DISCIPLINARY TRIBUNAL DELIVERED ON 20TH JANUARY 2025**

BETWEEN

REPUBLIC APPLICANT

AND

DAN JOSHUA KASINA EXPARTE APPLICANT

AND

THE ADVOCATES DISCIPLINARY TRIBUNAL RESPONDENT

AND

ROBERT KARIUKI MUNYI INTERESTED PARTY

RULING

1. Before me is an Originating Motion dated 12th June, 2025 brought under Order 53 Rule 1 of the Civil Procedure Rules, the [Law Reform Act](#), Rules 4 and 15 of the Fair Administrative Action Rules,



2024 and all other enabling provisions of the law, seeking leave of this Honourable Court to apply for an order of certiorari to quash the decision of the Advocates Disciplinary Tribunal delivered on 20th January 2025. The Tribunal dismissed the Applicant's application seeking a review and setting aside of its judgment rendered against the applicant on 21st March, 2021 in Disciplinary Cause No. 36 of 2017, wherein the advocate was ordered to deposit Kshs 50,000 received from the interested party, for filing of suit against Agha Khan Hospital claiming for damages for medical negligence following a surgery gone bad on the interested party. The complainant was to deposit the money with the Law Society of Kenya and have his bill of costs filed to the extent of the services rendered.

2. The applicant was aggrieved by the judgment and so, he filed an application for setting aside the said judgment. The application for review and setting aside of the judgment was dismissed.
3. The Applicant, an advocate of the High Court of Kenya, claims that the Tribunal did not consider his submissions and in the ruling refusing to set aside the judgment, failed to consider his submissions, acted in a casual and reckless manner and thereby deprived him of his right to a fair hearing.
4. He further argues that the certificate of taxation issued is unconstitutional, unreasonable, irrational and unfair, particularly considering his standing as an officer of the court.
5. The application was argued *exparte*, orally by Mr. counsel representing the applicant advocate, this morning.

Analysis and Determination

6. I have carefully considered the application, the statutory statement, verifying affidavit and annexures thereto. The only issue for determination is whether the leave sought is merited.
7. While this court acknowledges its constitutional mandate under Article 47 and its jurisdiction to review administrative action under the *Fair Administrative Action Act*, 2015, it is equally trite that the court's jurisdiction in judicial review is subsidiary and discretionary and should not be invoked where an adequate statutory remedy exists and has not been exhausted.
8. Section 9(2) of the *Fair Administrative Action Act* prohibits in mandatory term the court from entertaining judicial review proceedings where there is a statutory appeal or review mechanism for redressing the dispute between parties before the court. The section provides that:
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 - (1) ...
 - (2) The High Court or a subordinate court under subsection (1) shall not review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.
 - (3) ...
9. Under subsection (4) of the said Act:
 - (4) the High Court may, in exceptional circumstances and on application by the applicant, exempt such person from the obligation to exhaust any remedy if the court considers such exemption to be in the interest of justice.
10. Section 9(4) above allows for exemption only in exceptional circumstances and on application by the applicant, neither of which is present or pleaded in this case.



11. On the other hand, section 2 of the *Advocates Act* defines the Court to be the High Court. The *Advocates Act* under which the applicant was being disciplined for allegedly withholding the client's money provides for the mode of challenging decisions of the Disciplinary Tribunal at section 62 which provides the applicant herein with the statutory right of appeal to the High Court against decisions of the Disciplinary Tribunal. That right of appeal was neither pursued nor explained away, following dismissal of the application for review.
12. Section 62 of the *Advocates Act* provides:
 62. Appeal against order of Tribunal
 - (1) Any advocate aggrieved by order of the Tribunal made under section 60 may, within fourteen days after the receipt by him of the notice to be given to him pursuant to section 61(2), appeal against such order to the Court by giving notice of appeal to the Registrar, and shall file with the Registrar a memorandum setting out his grounds of appeal within thirty days after giving by him of such notice of appeal.
 - (2) The Court shall set down for hearing any appeal filed under subsection (1) and shall give to the Council of the Society and to the advocate not less than twenty-one days' notice of the date of hearing.
 - (3) An appeal under this section shall not suspend the effect or stay the execution of the order appealed against notwithstanding that the order is not a final order.
13. It is worth noting that the judgment of the Tribunal was rendered on 21st March, 2021 and the applicant applied for review or setting aside of the said judgment but the Tribunal declined to set it aside. In the impugned ruling, the Tribunal considered those submissions which the applicant had claimed, and he continues to claim that the Tribunal did not consider, and it found that the said submissions were merely rehashing the replying affidavit which the advocate had filed opposing the complaint hence the submissions even if considered earlier could not have changed the decision of the Tribunal.
14. The Advocates Disciplinary Tribunal is a subordinate Court and its decisions are appealable to the High Court. The High Court has powers under section 78 of the *Civil procedure Act* to set aside the decision of the Tribunal and order for rehearing. Furthermore, a decision refusing to review or set aside a judgment or ruling is a decision which is appealable to the High Court.
15. Although the application subject of this Ruling was filed just before the elapse of six months for filing of certiorari as stipulated in Order 53 Rule (2) of the Civil Procedure Rules, the application before me is brought long after the time for filing an appeal had lapsed, and there is no explanation offered for that delay.
16. There is equally no prayer for exemption under Section 9(4) of the *Fair Administrative Action Act* and neither are there exceptional circumstances, on the face of the application, for this court to exercise its discretion or inherent power to grant and exemption.
17. The Applicant cannot be permitted to circumvent a clear statutory appeal mechanism by invoking judicial review as a substitute. To allow that would not only defeat the doctrine of exhaustion but would also invite abuse of court process by transforming judicial review into an appellate jurisdiction, contrary to established law.
18. In the landmark decision of the Court of Appeal in *Speaker of the National Assembly v Karume* [2008] 1 KLR 426, the Court of Appeal held that where there is a clear procedure for the redress of



any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed.

19. Likewise, in *Geoffrey Muthinja & Another v Samuel Muguna Henry & 1756 Others* [2015] eKLR, the Court reaffirmed the doctrine of exhaustion and cautioned against bypassing statutory dispute resolution frameworks. The Court stated that the requirement is in conformity with Article 159(2)(c) of the Constitution as it encourages the use of alternative dispute resolution. Of note was the Court's holding that:

“It is imperative that where a dispute resolution mechanism exists outside Courts, the same be exhausted before the jurisdiction of the Courts is invoked. Courts ought to be the fora of last resort and not the first port of call the moment a storm brews... as is bound to happen. The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside of Courts.”

20. In *Ndiara Enterprises Limited v Nairobi City County & 2 Others* [2018] eKLR, the Court of Appeal upheld the High Court's decision and restated that a litigant should not rush to court where there are dispute resolution mechanisms established under statute. To do so renders those mechanisms otiose.
21. This principle was reaffirmed in *Republic v National Environment Management Authority Ex Parte Sound Equipment Ltd* [2011] eKLR, where the Court declined to entertain judicial review where the applicant had not exhausted the alternative remedies provided under the Environmental Management and Coordination Act.
22. Thus, Judicial review is not a substitute for internal mechanisms such as review or appeal.
23. In the circumstances, I find that the Applicant has not made a case for the grant of leave to commence judicial review proceedings. The application is premature, incompetent, and an abuse of the court process.
24. Accordingly, the Originating Motion seeking leave of Court (instead of Chamber Summons) dated June 12, 2025 is hereby dismissed with no order as to costs.
25. Of significance, though not being the reason for dismissal of the application, as it is a procedural lapse on the part of the applicant, is that a party seeking judicial review orders and who approaches the Court under the Fair Administrative Action Rules, 2024 does not require leave of the Court. Only applications brought under Order 53 of the Civil Procedure Rules require leave to apply, as mandated by Order 53(1) of the Civil Procedure Rules.
26. In this case, the applicant filed Originating Motion under Rule 11 of the Fair Administrative Action Rules, seeking leave to apply, which was erroneous.
27. This file is closed.
28. I so order.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 17TH DAY OF JUNE, 2025

R.E. ABURILI

JUDGE

