



Wambugu v Disciplinary Tribunal of the Law Society of Kenya & another (Civil Appeal E020 of 2021) [2024] KEHC 11034 (KLR) (Civ) (9 September 2024) (Judgment)

Neutral citation: [2024] KEHC 11034 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
CIVIL APPEAL E020 OF 2021
AC BETT, J
SEPTEMBER 9, 2024**

BETWEEN

JOHN WACIRA WAMBUGU APPELLANT

AND

**THE DISCIPLINARY TRIBUNAL OF THE LAW SOCIETY OF
KENYA 1ST RESPONDENT**

MONICA WANJIKU NGUGI 2ND RESPONDENT

(Being an appeal from the ruling of The Disciplinary Tribunal of The Law Society of Kenya in Disciplinary Cause No. 79 of 2013 delivered on 20th July 2020)

JUDGMENT

1. By way of an affidavit sworn on 9th May 2013, the 2nd Respondent lodged a complaint with the 1st Respondent alleging that she was the daughter and co administrator of the estate of her late father by the name of John Mbugua Ngugi (deceased), hereinafter referred to as “the deceased”.
2. The 2nd Respondent averred that prior to his death, the deceased had instructed the Appellant’s firm namely, Wambugu & Motende Advocates, to act for him in a conveyancing transaction involving two properties namely, LR No. 209/8/16 and LR. No. 209/4191/04 which were to be sold for the sum of Kshs. 69,500,000/=, and Kshs. 20,000,000/=, respectively.
3. She claimed that by the time of her father’s demise, conveyance formalities pertaining the said properties had been substantially performed and, what only remained was the disbursement of funds realized from their sale.
4. The 2nd Respondent further asserted that following the deceased’s demise, the said firm of Wambugu & Motende Advocates acted for them in taking out letters of administration in respect of his estate.



5. The gravamen of her complaint against the Appellant was that thereafter, he stopped picking their calls or responding to their messages and that he unlawfully withheld their funds amounting to Kshs. 29,833,333/=. She therefore lodged a complaint against the Appellant for: -
 - a. Failure to render an account for funds held on behalf of the client.
 - b. Failure and/or refusal to communicate with the 2nd Respondent and her co-dependants who were his clients.
 - c. Unlawfully withholding the client's funds in the sum of Kshs. 29,833,333/= plus interest, which sum was later amended to read Kshs. 27,484,708/= pursuant to Rule 23 of the Advocates (Disciplinary) Committee Rules.
6. In response, to the 2nd Respondent's complaint, the Appellant filed a replying affidavit sworn by himself on 20th August, 2013 in which he explained that John Mbugua Ngugi (deceased) was a beneficiary and an administrator of the estate of Grace Wanjiku Ngugi (deceased) who was also an administrator of the estate of Peter Mbugua Ngugi (deceased) but then Grace Wanjiku Ngugi died before completing administration of the estate of Peter Mbugua Ngugi.
7. He stated that the properties forming part of the estate of Grace Wanjiku Ngugi were to be sold and the proceeds therefrom shared among her beneficiaries.
8. He also claimed that John Mbugua Ngugi who was the administrator of the estate of Grace Wanjiku Ngugi was accused of not properly administering the estate by other beneficiaries and by orders dated 26th November, 2010, the Appellant was directed to dispose of LR No. 209/8/16 (IR No. 51787) located at Parklands Nairobi to Jalaram Pride Apartments Limited for Kshs. 69,500,000/ and L.R No. 209/4191/04 (IR No. 10228) located at Juja Road, Nairobi to M. Dalmar Trading Company Limited for a sum of Kshs. 20,000,000/=.
9. The Appellant further averred that the firm of Meraka & Co. Advocates had forwarded to him a sum of Kshs. 7,349,732/=: only, and that, he had furnished the said law firm with a professional undertaking not to release the funds pending the completion of distribution of the estate of Grace Wanjiku Ngugi(deceased).
10. He also claimed that the High Court in Mombasa Succession Cause No. 416, in Re Estate of Grace Wanjiku Ngugi directed that the money they held should not be released.
11. In a judgment of the tribunal delivered on 27th October 2014, the 1st Respondent convicted the Appellant of the following charges: -
 - a. Failure to render an account of the funds held by him on behalf of the estate of John Mbugua Ngugi.
 - b. Unlawfully withholding the aforesaid estate's fund in the sum of Kshs. 27,484,708/=.
 - c. Failure to honor an order of the Tribunal.
12. The Appellant was further directed to pay the 2nd Respondent the sum of Kshs. 27,484,708/= within 14 days from the date of the judgment in default execution to issue against him.
13. An order was subsequently issued on 20th July, 2024, by the 1st Respondent's Secretary, directing as follows: -
 - a. That the advocate is hereby struck off the Roll of Advocates with immediate effect.



- b. That the Law Society of Kenya to prepare the Report to the Registrar of the High Court within 14 days from the date of this order.
 - c. That the complainant is to pursue the execution proceedings after the Report is filed with the Registrar of the High Court.
 - d. That the matter will be mentioned on 7th December 2020 to record progress of execution.
14. Aggrieved by this directive, the Appellant lodged a Memorandum of Appeal dated 11th December 2023, seeking the following orders: -
- a. That this honourable court do set aside and quash the orders issued on 20th July 2020.
 - b. That this honourable court to find in favour of the Appellant and compel the Appellant and the 2nd Respondent to conduct a reconciliation of accounts and ascertain the amount payable, if any.
 - c. That this honourable court be pleased to set aside the order issued by the 1st Respondent striking the appellant off the Roll of Advocates.
 - d. That the honourable court do declare the report issued to the Chief Registrar of the Judiciary as null and void.
 - e. That the costs of this appeal be provided for.
 - f. That this appeal be allowed.
 - g. That this honourable court does award such other or further relief as it may deem just and expedient under the circumstances of this case.
15. The appeal is premised on the following grounds;
- a. That the 1st Respondent erred in law and in fact by failing to consider the prejudice the Applicant is likely to suffer by striking him off the Roll of Advocates, before conducting an audit and/or reconciliation of accounts and determining the amount payable, if any.
 - b. That the 1st Respondent erred in law and in fact by failing to consider the evidence placed before itself by the Appellant in terms of the detailed statement of accounts before issuing the punitive order of striking him off the Roll of Advocates, the said act of the 1st Respondent has caused the Appellant a lot of distress and health complications that they have caused the Appellant to travel overseas for treatment months on end.
 - c. That the 1st Respondent erred in law and in fact by failing to hold the 2nd Respondent accountable for their own claim and deliberately concealed material facts regarding legal fees owed to the Appellant by themselves and further, compelling the Appellant to present a detailed statement of accounts which the 1st Respondent disregarded in totality.
 - d. That the 1st Respondent erred and misdirected itself in striking out the Appellant from the Roll of Advocates when it ordered the Appellant and the 2nd Respondent on 4th February, 2019 to take accounts and present to the 1st Respondent on 15th April, 2019 which only the appellant presented and/or complied with the said order.
 - e. That the 1st Respondent erred in law and in fact by failing to take into account the monies paid to them by the Appellant in favour of the complainant and later released the said monies to the 2nd Respondent.



- f. That the 1st Respondent erred in failing to consider that the Appellant's sole source of livelihood is in the practice of law as an advocate of the High court of Kenya.
16. This appeal was canvassed by way of written submissions pursuant to directions earlier issued.
17. The Appellant contends that on 4th February 2019, the 1st Respondent directed parties to take accounts and appear before the Tribunal with confirmed figures on 15th February, 2019 and that while he complied with the orders, the 2nd Respondent failed to do so and therefore they have been unable to determine the contentious and non-contentious figures.
18. The Appellant contends that the 2nd Respondent failed to disclose that the proceeds from the sale of the two suit properties were to be shared among the beneficiaries of the estate of Grace Wanjiku Ngugi as per the confirmed grant.
19. He asserts that LR No. 209/4194/14 was sold for Kshs. 22,000,000/= and that the proceeds from the sale were deposited with the firm of Mereka & Co. Advocates who released to them a sum of Kshs. 7,349,732/= being the share of John Mbugua Ngugi.
20. The Appellant claims in his written submissions that the proceeds of sale of L.R. No. 209/8/16 were distributed as follows:-
- Kshs. 950,000/= was paid directly by the purchasers to John Mbugua Ngugi (deceased).
 - Kshs. 400,000/= was paid directly by the purchasers to Victoria John Ngugi (a beneficiary of the estate).
 - Kshs. 1, 500,000/= was paid out to the firm of Munyithia & Co. Advocates who were acting on behalf of the estate prior to their appointment.
 - Kshs. 8,493,789/= was paid out as transactional costs for agency fee, land rates and rent, clearance certificate, change of user, extension of lease of the property and stamp duty.
 - The balance of the purchase price was financed by M/s Development Bank of Kenya Limited whereby Kshs. 49,921, 580/= was deposited to Mereka & Co. Advocates who were acting on behalf of the beneficiaries and Kshs. 8,234,31/= being the portion of the estate of John Mbugua Ngugi was paid to them on 14th July 2011.
21. The Appellant further submitted that the total amount received by his firm was Kshs. 15,584,363/=-, only, out of which Kshs. 2,893,000/= was paid to the administrators of the estate of John Mbugua Ngugi, Kshs. 250,000/= was paid to Nancy Mbugua, a beneficiary of the estate, Kshs. 9,500,000/= was deposited with the 1st Respondent and later released to the 2nd Respondent's advocates, Kshs. 1,200,000/= was paid to the 2nd Respondent and Kshs. 850,000/= was paid as legal fees to the 2nd Respondent's advocates.
22. The Appellant contends that he had availed all the evidence in his possession including receipts, copies of cheques and other necessary documents and had prepared a detailed statement of accounts to show how the proceeds from the sale of L.R. No. 209/4194/14 were utilized.
23. According to him, it was improper for the 1st Respondent to issue orders directing him to deposit Kshs. 11,000,000/= which sum, was never forwarded to him by Mereka & Company Advocates, which had received all the proceeds from the sale of the two properties.
24. On whether this court should compel the Appellant and the 2nd Respondent to conduct a reconciliation of accounts, the 2nd Respondent submits that this court in its rulings delivered on 30th



- June, 2021 with respect to applications dated 18th January 2021 and 23rd February 2021 pronounced that the issue of reconciliation of accounts was already dealt with before the 1st Respondent.
25. She further states that on page 199 of the record of appeal, the Appellant's representative confirms reconciliation between parties. She also argues that on 14th February 2019, the Appellant was ordered to deposit the undisputed sums of Kshs.11,974,708/= with the Law Society of Kenya before 15th April, 2019, in default of which, a notice to show cause as to why he should not be struck off the Roll of Advocates was to issue. That it was the Appellant's non-compliance with these orders that culminated in the order dated 20th July 2020.
26. This court has considered the grounds of appeal, the proceedings of the Tribunal and the submissions by the parties and now discerns the issues for determination to be:-
- i. Whether reconciliation of accounts ought to be ordered.
 - ii. Whether the 1st Respondent erred in striking the Appellant off the Roll of Advocates.
27. The Appellant is contesting the 1st Respondent's order striking him off the Roll of Advocates. He argues that in the events leading up to the issuance of the order, his accounts and those of the 2nd Respondent were not reconciled to establish the true amounts that he owes to the 2nd Respondent.
28. The 2nd Respondent has argued that this court lacks the jurisdiction to determine this appeal by dint of a ruling dated 1st March 2023 which adopted the judgment of the 1st Respondent issued on 27th October 2014 as an order of this court and that the only way this court can set aside its own orders is through an application for review and none had been made in this case.
29. She further contends that this court lacks jurisdiction for the reason that the appellant filed Civil Appeal No. E398 of 2021 against the order of 20th July 2020 which was heard and determined and that this appeal is tantamount to a second appeal.
30. I have perused the file, and I have established that Civil Appeal No. E398 of 2021 was in respect to an application seeking an injunction to restrain the 2nd Respondent from executing the 1st Respondent's order dated 15th February, 2021 and also for orders that the Appellant be allowed to deposit a bank guarantee of Ksh. 9,900,000/- in court because he could not deposit cash for an equivalent sum as directed by court as he was out of gainful employment after being struck out of the Roll of Advocates. The said matter was therefore distinct from the present appeal.
31. The duty of the court in a first appeal is to re-examine the evidence and upon re-appraisal of the facts, reach its own conclusion(s). See *Selle vs. Associated Motor Boat Company Ltd.*(1968)EA123.
32. Section 60 (1) to (3) of the [Advocates Act](#) empowers the 1st Respondent to receive and determine complaints against advocates. The Section provides thus: -
- “ 1) A complaint against an advocate of professional misconduct, which expression includes disgraceful or dishonourable conduct incompatible with the status of an advocate, may be made to the Tribunal by any person.
 - 2) Where a person makes a complaint under subsection (1), the complaint shall be by affidavit by himself setting out the allegations of professional misconduct which appear to arise on the complaint to the Tribunal, accompanied by such fee as may be prescribed by rules made under section 58(6); and every such fee shall be paid to the Society and may be applied by the Society to all or any of the objects of the Society.



- 3) Where a complaint is referred to the Tribunal under Part X or subsection (1) the Tribunal shall give the advocate against whom the complaint is made an opportunity to appear before it, and shall furnish him with a copy of the complaint, and of any evidence in support thereof, and shall give him an opportunity of inspecting any relevant document not less than seven days before the date fixed for the hearing:

Provided that, where in the opinion of the Tribunal the complaint does not disclose any prima facie case of professional misconduct, the Tribunal may, at any stage of the proceedings, dismiss such complaint without requiring the advocate to whom the complaint relates to answer any allegations made against him and without hearing the complaint.”

33. Upon considering the evidence tendered, the Tribunal can issue any orders set out in section 60(4) of the [Advocates Act](#) which provides: -

“(4) After hearing the complaint and the advocate to whom the same relates, if he wishes to be heard, and considering the evidence adduced, the Tribunal may order that the complaint be dismissed or, if of the opinion that a case of professional misconduct on the part of the advocate has been made out, the Tribunal may order—

- (a) that such advocate be admonished; or
- (b) that such advocate be suspended from practice for a specified period not exceeding five years; or
- (c) that the name of such advocate be struck off the Roll; or
- (d) that such advocate do pay a fine not exceeding one million shillings; or
- (e) that such advocate pays to the aggrieved person compensation or reimbursement not exceeding five million shillings, or such combination of the above orders as the Tribunal thinks fit.”

34. In order to put this appeal into perspective, the court is of the view that the history of the complaint must be set out. The proceedings at the Tribunal commenced on the 17th day of June 2013. The Appellant was not present for plea taking and his advocate indicated that he was unwell though no evidence was tendered in this regard.

35. The Appellant’s reluctance to submit accounts or release any of the undisputed funds is apparent from the proceedings. Noteworthy, the Appellant attempted to forestall the proceedings before the 1st Respondent by invoking the pendency of Mombasa Succession Case No 416 of 2016 and by filing judicial review proceedings in Milimani HC Miscellaneous Application [No 445 of 2013](#) in which he sought for stay of the proceedings before the 1st Respondent.

36. On 7th February 2014, the court granted the Appellant a conditional stay of the proceedings subject to him depositing Kshs. 10,000,000/= in a joint account to be held by the two law firms representing the parties herein.



37. The Appellant did not however comply with the court's order within the prescribed timelines. Consequently, the 1st Respondent directed that the matter do proceed under Rule 18 of the Advocates (Disciplinary) Committee Rules and fixed the matter for judgment on 14th July 2014.
38. A review of the evidence reveals that although the Appellant had initially sworn an affidavit on 30th August 2013 averring that he had received a sum of Kshs. 7,349,732/= , only, on the 2nd Respondent's account, when the matter came up before the 1st Respondent on 4th November 2013, his advocate confirmed that the he had in addition received a further sum of Kshs.8,734,631/-=making a total of Kshs. 16,084,363/=.
39. According to the Appellant's Counsel, they had paid to the 2nd Respondent a sum of Kshs. 2,987,615/= leaving a balance of Kshs. 13,096,748/= which they were holding pending settlement of bills amounting to Kshs. 7,000,000/=.
40. After hearing both parties, the 1st Respondent determined that the amount being held by the Appellant was Kshs. 27,484,708/= and the Appellant was ordered to deposit the said sum upon withholding a sum of Kshs. 3,500,000/= being security for his costs.
41. It is however evident that the Appellant did not comply with the orders of the 1st Respondent. The 2nd Respondent later complained that he had refused to release funds to her for payment of school fees.
42. The 1st Respondent delivered its judgment on 27th October, 2014, in which it found the appellant guilty as earlier stated.
43. The Appellant was ordered to settle the decretal sum within 14 days. The Appellant opted to apply for review of the Judgment in the first instance.
44. Rule 13 (1) of the Advocates (Accounts Rules) stipulates: -
- “(1) Every advocate shall at all times keep, properly written up, such books of account as may be necessary to show—
 - a. every receipt by him of client's money, for each separate client; and
 - b. every payment or application by him of or from client's money, for each separate client; and
 - c. the amount held by him for the time being in the client account, for each separate client; and
 - d. the moneys expended by him for, and the costs charged by him to, each separate client.
 - (2) The books of account referred to in paragraph (1) shall include—
 - (a) either—
 - (i) a cash book in which to record every transaction involving client's money or other money dealt with by the advocate through a client account, and a separate cash book in which to record every transaction involving the advocate's own money and relating to the affairs of his clients; or



- (ii) a cash book ruled with two separate principal money columns on each side, one such column for recording every transaction involving client's money or other money dealt with by the advocate through a client account and the other for recording every transaction involving the advocate's own money and relating to the affairs of his clients; and
- (b) either—
 - (i) a ledger in which to record every transaction involving client's money or other money dealt with by the advocate through a client account, and a separate ledger in which to record every transaction involving the advocate's own money and relating to the affairs of his clients; or
 - (ii) a ledger with two separate principal money columns on each side, one such column for recording every transaction involving client's money or other money dealt with by the advocate through a client account and the other recording every transaction involving the advocate's own money and relating to the affairs of his clients; and
- (c) a record showing particulars of all bills of costs delivered by the advocate to his clients, distinguishing between profit costs and disbursements.

(3) A cash book or ledger required to be kept under this rule may be a loose-leaf book.

(4) In this rule, "cash book" and "ledger" include such cards or other permanent records as are necessary for the operation of a mechanical system of book-keeping."

45. In handling a client's funds, an advocate stands in the position of a trustee. In the circumstances, he has a fiduciary duty to safeguard the client's funds and fully account for the same.

46. The Appellant in this case was therefore duty bound to keep proper and up-dated statements of accounts with respect to funds received, disbursed or being held by him on behalf of the 2nd Respondent who was his client.

47. I have perused the record of appeal and the original file. Contrary to the Appellant's submissions, there is nothing in the proceedings to support his assertion that he ever furnished the 1st Respondent with the accounts that he had been ordered to file.

48. Furthermore, in spite of the damning allegations levelled against him, the Appellant never submitted any evidence of the actual funds ever received and disbursed on the 2nd Respondent's account as is evidenced by the contradictory figures he kept citing. One example relates to the amount received. Whereas before the Tribunal, he said he had received Kshs. 16,084,363/=, in an affidavit sworn on 28th July 2021 in support of an application for enlargement of time within which to deposit the Kshs.



- 9,900,000/- with the 1st Respondent, the Appellant attached as evidence annexure JWW4 which was a statement of accounts reflecting the total amount received as Ksh. 15,584,363/- a figure that is less by Kshs. 500,000/- .
49. Nothing would have been simpler for the Appellant than to provide an extract from the firm's cash book and redacted bank statements reflecting all the debits and credits in respect of funds received and held on behalf of the 2nd Respondent.
50. In short, the Appellant failed to tender the accounts envisaged by Rule 13(1) and (2) of the Advocates (Accounts) Rules. In fact, the only evidence of funds paid on behalf of the 2nd Respondent that the Appellant tendered was evidence with respect to two sums of Kshs. 600,000/= each paid to Law Society of Kenya (LSK) on 21st and 22nd January 2019 by way of RTGS.
51. The court notes that the said deposit was made by the Appellant after LSK denied being in receipt of similar amounts that the Appellant alleged to have paid into the LSK's accounts on 30th January 2014 and 18th February 2014.
52. The Court further notes that notwithstanding the fact that judgment had long been delivered albeit pending delivery of a ruling on his application for review of judgment, the Appellant abandoned the application for review and sought, and was granted indulgence to enable him negotiate with his client, the 2nd Respondent.
53. On 12th October 2015, upon Appellant's application, summonses were issued to all the advocates involved in the subject transaction to furnish the LSK with their respective statements of accounts. In this regard, Mr. Mereka of Mereka and Co. Advocates personally attended court.
54. Subsequently, the 1st Respondent ordered that each of the named law firms do file affidavits attaching their statements of accounts within 30 days and to serve the same upon the Appellant.
55. The Advocates involved did comply with the orders of the 1st Respondent, the Appellant was then directed to file a further replying affidavit which he never did.
56. The court is cognizant of the fact that the further affidavit was expected to provide the Appellant with another chance to submit his client's accounts and thus redeem himself.
57. The Appellant did not however seize the opportunity. A scrutiny of the proceedings does not reveal a detailed statement of accounts that the Appellant claims to have tabled. If indeed the Appellant filed his statement of accounts before the Tribunal, then he did not include them in the record of appeal.
58. The Appellant submitted that it was improper for the 1st Respondent to issue orders directing him to deposit a further sum of Kshs. 11,000,000/= which sum he never received from Messrs. Mereka & Co., Advocates.
59. The court notes however that Mr. Mereka appeared before the Tribunal and rendered his accounts. Although the Appellant did not include any statements of account in his record of appeal save for one from Mereka & Co., in respect of the first tranche of money sent to him in the sum of Kshs. 7,349,732/=, it is evident from the proceedings of 7th December 2020 that the Tribunal were satisfied that Mr. Mereka had forwarded the sum of Kshs. 27,000,000/= to the Appellant.
60. In any event, if it were true that Mr. Mereka had not forwarded all the proceeds of the sale to the Appellant, nothing prevented him from taking legal steps against Mr. Mereka to recover the sums on behalf of the 2nd Respondent to whom he owed the fiduciary duty of ensuring that 34% of the sale proceeds of the two properties were secured.



61. Even though the Appellant claims that the 1st Respondent failed to consider the prejudice he would suffer by striking him off the Roll of Advocates nothing is further from the truth.
62. From the proceedings, it is clear that the Appellant squandered opportunities afforded to him to clear the air on the complaint raised against him and therefore purge himself of the complaints that he had been convicted for.
63. The Court further notes that the claim was before the 1st Respondent for about six years. Even after judgment was delivered, the Appellant was still granted numerous adjournments even as the 2nd Respondent was complaining that he had refused to release funds to her for school fees.
64. Moreover, even after he was ordered to deposit Kshs. 1,200,000/= with the Law Society of Kenya for onward transmission to the 2nd Respondent for purposes of paying the school fees, it later transpired that the cash receipts produced by the Appellant purporting to have been issued by the LSK may not have originated from there and were forgeries.
65. On 4th February 2019, the Appellant was directed to deposit the undisputed sums of Kshs. 11,974,708 with the LSK before 15th April 2019 in default of which a notice to show cause why he should not be struck off the Roll of Advocates was to issue.
66. The Appellant again defied these orders. It was not until over a year later that the 1st Respondent on 20th July, 2020, directed that the Appellant's name be struck off the Roll of Advocates.
67. Faced with a recalcitrant advocate, the 1st Respondent had no option but to resort to the drastic measure of striking him off the Roll.
68. Contrary to the Appellant's assertion that the 1st Respondent failed to consider the prejudice that he was likely to suffer by striking him off the Roll of Advocates before conducting an audit and/or reconciliation of accounts payable, it is clear from the proceedings that the 1st Respondent put all the factors raised by the Appellant into consideration and did not take the step of striking him off the Roll lightly.
69. The stark truth is that the Appellant in all the years he was before the 1st Respondent and even before this court, did not submit proper accounts as required of him.
70. Instead, all the Appellant filed was a tabulation of figures with no references or transaction numbers to prove the transactions ever occurred, save for a few cheque numbers.
71. Being a professional and an experienced advocate at that, one would expect that he maintained a proper book of accounts and could therefore prove, without any hesitation or prevarication, the amounts received by him on account of the 2nd Respondent as well as the amounts expended and/or paid out on the 2nd Respondent's account.
72. In view of the foregoing, it is apparent that there are no mitigating factors in favour of the Appellant at the time the 1st Respondent pronounced the impugned decision.
73. In regard to legal fees owed to the Appellant, I have perused the record and have failed to find any fee note or bill of costs drawn by the Appellant in respect of services rendered by him to the 2nd Respondent. Rule 13(2) (c) of the Advocates (Accounts) Rules is clear. The Appellant was under a statutory duty to keep a record showing particulars of all bills of costs delivered to the 2nd Respondent.
74. He could not therefore be heard claiming that he was owed legal fees, and more particularly that he was holding the sum of Kshs. 13,096,748/= pending settlement of bills amounting to Kshs. 7,000,000/=



in absence of any Advocates/Clients bill of costs. Moreover, the Tribunal had earlier allowed him to withhold a sum of Ksh. 3,500,000/- as a lien for his fees.

75. A perusal of the records shows only one bill that was drawn by the firm of Joseph Munyithya & Co., Advocates and none by the Appellant.
76. This court cannot fault the findings of the 1st Respondent that the appellant was guilty of violating the law and thus liable for the sanctions set out in Section 60(4) of The Advocates Act.
77. The 1st Respondent gave the Appellant ample time to comply with its orders or to sort out his financial affairs with the 2nd Respondent.
78. The Appellant however failed to do so leaving the 1st Respondent no choice other than to invoke its powers under the Advocates Act.
79. In the case of Mohammed Faki Khatib practicing as Khatib and Company Advocates vs. Farid Ahmed Swaleh & Another [2021]eKLR, the Court of Appeal had this to say:

“The appellant having a fiduciary duty to account for the monies received by him, he had the duty to satisfactorily discharge this obligation by properly accounting for the monies which were entrusted to him. The appellant should not have had difficulties giving account of the monies received, because the appellant ought to have had a proper paper trail of the transactions undertaken, and the monies paid out. From the contradictory accounts that the appellant gave, it is evident that the appellant did not have a proper paper trail of the monies received and paid out.”

80. The Appellant has also sought orders compelling the 2nd Respondent to conduct a reconciliation of accounts. As stated earlier, the Appellant was accorded sufficient opportunities to tender his statement of accounts but he spurned them all.
81. Nonetheless, I note that reconciliation was finally done in which all the other parties involved in the transaction that gave rise to the proceedings appeared before the 1st Respondent appeared and tendered their accounts. The 2nd respondent also tendered her accounts.
82. It is not clear from the proceedings whether the Appellant submitted his statement of accounts. What is clear however is that on 4th February 2019, his advocate, Mr. Kimani confirmed to the 1st Respondent that reconciliation had been done.
83. It was on the basis of that reconciliation that the Appellant was required to deposit Kshs. 11,974,708/= being the undisputed sum, leaving the contested amount of Kshs. 4,810,000/=.
84. On perusing the file, I have established that reconciliation is an issue that the Appellant has raised in a number of instances despite the fact the proceedings before the 1st Respondent show that reconciliation was done which position was confirmed by the Appellant’s advocate.
85. The act of reconciliation having been undertaken is further confirmed in the ruling of H.I. Ong’udi J delivered on 30th June 2021 where she observes as follows at paragraph 41: -

“The proceedings (MWN1) before the Tribunal clearly confirm that joint reconciliation was done, and the only disputed sum is Kshs. 4,810,000/= while Kshs. 11,900,000/= is undisputed hence the order for him to deposit the said sum.”



86. In any event, the order striking out the Appellant from the Roll of Advocates was informed by the unchallenged judgment dated 27th October 2014, and the Appellant's subsequent conduct that bordered on impunity. This conduct was further compounded by the Appellant's failure to attend the Tribunal when ordered to do so in order to show cause why he should not be struck off the Roll of Advocates.
87. In the circumstances the Appellant's claim that reconciliation ought to be conducted to ascertain what is owed to the 2nd Respondent is not tenable. The Appellant is shifting goal posts.
88. The court further appreciates that at no point in the course of the proceedings before the 1st Respondent did the Appellant complain about the failure by the 2nd Respondent to submit her statement of accounts or to disclose the outstanding legal fees.
89. Be that as it may, this court holds the view that had the Appellant maintained proper records and provided a comprehensive paper trail of the transactions in respect to the 2nd Respondent's money, failure by the 2nd Respondent to submit her statement of accounts would not be an issue.
90. This Court thus finds that decision of the 1st Respondent was not only within the limits of its jurisdiction but also warranted. The 1st Respondent is mandated to enforce ethical standards in the legal profession by adjudicating complaints of professional misconduct or conduct unbecoming. It acted within its statutory powers and its orders were therefore valid.
91. The Appellant cannot therefore now move this court seeking an order to set aside the decision of the 1st Respondent to have his name struck off the Roll of Advocates yet from the proceedings of the Tribunal it is apparent that he has all along been instrumental in the delay and frustration of the process therefore impeding the finalization of the matter which was lodged in the Tribunal in the year 2013.
92. By failing to obey court orders and filing a myriad of applications without any justifiable cause, the Appellant abused the process of the court. It is the duty of this court to put a halt to such actions which bring disrepute to the legal profession.
93. Accordingly, for the reasons set out above, the court finds this appeal lacks merit and the same is dismissed with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAKAMEGA THIS 9TH DAY OF SEPTEMBER, 2024.

A. C. BETT

JUDGE

In the presence of:

Adika holding brief for Mr. Achayo for Appellant

Olembo for 1st Respondent

Ms. Jin for 2nd Respondent

Court Assistant: Polycarp

