



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**CIVIL APPEAL NO. E270 OF 2021**

LEO MASORE NYANG'AU.....APPELLANT

VERSUS

SULEIMAN MURUNGA.....RESPONDENT

**RULING**

1) Leo Masore Nyangau, the appellant herein, took out the motion dated 13<sup>th</sup> October 2021, whereof he sought for the following

orders:

*i. THAT this honourable court be pleased to certify this application urgent and to hear the same ex-parte initially due to the said urgency.*

*ii. THAT the honourable court be pleased to grant an order of temporary stay of further proceedings, in particular mitigation and sentencing slated for 1<sup>st</sup> November 2021, before the Advocates Disciplinary Tribunal in case no. 61 of 2019 in the matter of Leo Masore Nyang'au pending the inter-partes hearing of this application.*

*iii. THAT pending the hearing and final determination of this appeal, this honourable court be pleased to grant stay of further proceedings or execution of any order made by the tribunal in Advocates Disciplinary Tribunal case 61 of 2019 in the matter of Leo Masore Nyang'au pending the hearing and determination of the appeal filed against the judgment given in the said case on the 10<sup>th</sup> May 2021.*

*iv. THAT the costs of this application be provided for.*

2) The motion is supported by the affidavit sworn by the appellant. Suleiman Murunga, the respondent herein filed a replying affidavit he swore and a notice of preliminary objection to oppose the motion.

3) Learned counsels appearing in this matter were invited to make oral submission. I have considered the grounds stated on the face of the motion and the facts deponed in the rival affidavits. I have further considered the grounds stated on the preliminary objection plus the rival oral submissions and the authorities cited.

4) The main order being sought is an order for stay of further proceedings and or stay of any order made

by the Tribunal in Advocates Disciplinary Tribunal of Leo Masore Nyangau pending appeal.

5) It is the submission of the appellant/applicant that on 10<sup>th</sup> May 2021 the advocates Disciplinary Tribunal delivered its judgment whereof it found the appellant guilty of unprofessional conduct. The Tribunal then fixed the case for mitigation and sentencing on 1<sup>st</sup> November 2021.

6) The appellant averred that he is aggrieved by the Tribunal's conviction order and has through this appeal sought to challenge the decision.

7) The applicant has now urged this court to grant him the order to stay of further proceedings of the Advocates Disciplinary Tribunal until this appeal which raises arguable grounds is heard and determined.

8) He argued that unless the order for stay is granted, he may be Admonished, suspended from practice, struck off the roll of advocates, or fined and therefore he may suffer irreparable damage.

9) The appellant also stated that mitigation and sentencing may be undertaken by the Tribunal thus rendering this appeal nugatory.

10) The Respondent on the other hand opposed the application stating that the same is meant to circumvent the law and emasculate and interfere with the jurisdiction of the Advocates Disciplinary Tribunal. The respondent pointed out that in any case he has been wrongly joined to this appeal because he was merely a complainant before the Disciplinary Tribunal.

11) He stated that the Advocates Disciplinary Tribunal should have been joined to this appeal as a respondent instead. The respondent further stated that the appeal is incompetent in that the Disciplinary Tribunal has not given notice to the advocate(appellant) pursuant to the provisions of Section 61(2) of the Advocates Act.

12) It is also pointed out that the advocate has not served the Registrar of the High Court with the Notice of Appeal as required under the Advocates Act. The respondent further stated that the appellant still has a right to appeal against the order on sentence after it is meted out, therefore the appellant will not suffer any substantial loss.

13) Having considered the material placed before this court plus the rival submission, it is not in dispute that the appellant was convicted for professional misconduct by the Advocates Disciplinary Tribunal on 10<sup>th</sup> May 2021.

14) It is also not denied that the Advocates Disciplinary Tribunal has invited the appellant for mitigation on 1<sup>st</sup> November 2021 before meting out the appropriate sentence.

15) This court has been urged to stay further proceedings the Advocates Disciplinary Tribunal until the appeal against the order on conviction is heard and determined. The appellant has stated that his appeal will be rendered nugatory if the order for stay is denied. He also stated that he will suffer substantial loss in that a sentence will have been pronounced which may dent his reputation.

16) In an application for stay of proceedings or stay of execution, pending appeal, an applicant must show the substantial loss he would suffer if the order for stay is denied. In the instant application, I am not convinced that the appellant would suffer substantial or that the appeal would be rendered nugatory if the order is denied.

17) First, the appellant still retains the right of appeal against any decision on sentence by the Advocates' Disciplinary Tribunal after receiving mitigating facts from the appellant.

18) Secondly, the appellant still retains the right to seek for stay of execution of the Tribunal's decision on sentence after pronouncement.

19) This court appreciates the fact that a party in such proceedings has a right to appeal against both the order on conviction and sentence. However, this court discourages the practice of parties seeking to separately appeal against the order of conviction and sentence, because that tends to delay and prolong the determination of such cases.

20) This court is of the opinion that the appropriate decision is to allow the Advocates Disciplinary Tribunal to conclude its process after which any party aggrieved by the final outcome can approach this court on appeal.

21) In the end, I find the appellant's motion dated 13<sup>th</sup> October 2021 to be without merit. The same is dismissed with costs abiding the outcome of the appeal.

Dated, Signed and Delivered online via Microsoft Teams at Nairobi this 1<sup>st</sup> day of November, 2021.

.....

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Appellant

..... for the Respondent