

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

SUCCESSION CAUSE NO. 118 OF 2015

IN THE MATTER OF THE ESTATE OF DISMAS KUNYA FIBANDA (DECEASED)

RULING

1. I am determining a preliminary objection, dated 2nd January 2021, raised with respect to the status of Changaya Kennedy Wesa, to appear in this matter as Advocate for one of the parties. It is argued that he has not taken out a practicing certificate for a long time.
2. An extract, from records held at the Law Society of Kenya, shows that that he has been inactive in 2017, 2018, 2019 and 2020, and that he had earned no Continuous Professional Development (CPD) points for each of those years.
3. The preliminary objection was argued on 15th June 2021.
4. This is fairly straightforward. The record is clear that Mr. Wesa has not taken out practicing certificates since 2017. Hence, he is described as inactive for all those years. Without a practicing certificate, an Advocate is not qualified to act as such. Since there is lack of qualification, any documents filed by such an Advocate would be incompetent. Consequently, if Mr. Wesa filed any papers herein in 2017 to 2020, both dates inclusive, then such filings are incompetent, null and void, for they were filed by an unqualified person, within the meaning of sections 9, 31 and 34 of the Advocates Act, Cap 16, Laws of Kenya.
5. I hereby uphold the preliminary objection, dated 2nd January 2021. All the filings by Mr. Wesa, in this matter, in 2017, 2018, 2019 and 2020, are accordingly struck out.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 10TH DAY OF DECEMBER, 2021

W MUSYOKA

JUDGE