**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MILIMANI (NAIROBI)**

**CONSTITUTIONAL & HUMAN RIGHTS DIVISION**

**PETITION NO.541 OF 2017**

**IN THE MATTER OF ADVOCATES DISCIPLINARY TRIBUNAL**

**AND**

**IN THE MATTER OF ARITICLES 10, 20(1), (2) AND (4); 22(1); AND 23(1) AND (3) OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF ALLEGED CONTRAVENTION OF ARTICLES 27, 31, 40, 47 AND 50 OF THE CONSTITUTION OF KENYA**

**AND**

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

**AND**

**IN THE MATTER OF FAIR ADMINISTRATIVE ACTION ACT, 2015**

**AND**

**IN THE MATTER OF THE EVIDENCE ACT (CAP 80), LAWS OF KENYA**

**BETWEEN**

**BRITAM ASSET MANAGERS (KENYA) LIMITED.....PETITIONER**

**VERSUS**

**ADVOCATES DISCIPLINARY TRIBUNAL.....1ST RESPONDENT**

**PATRICIA NJERI WANYAMA.....2ND RESPONDENT**

**THE HON. ATTORNEY GENERAL.....3RD RESPONDDENT**

**LAW SOCIETY OF KENYA.....4TH RESPONDENT**

**JUDGMENT**

**Petitioner's Case**

**1.** The petitioner **M/s BRITAM ASSET MANAGERS (KENYA)Limited**through an amended petition dated 6th November 2017, seeks several orders against the Respondents in relation to the ruling of 16th October 2017 delivered by the 1st Respondent herein, the Advocates Disciplinary Tribunal, a copy whereby is attached as exhibit **"MB1"** to the further affidavit sworn on 19th February 2018.

**2.** The petitioner relies on the supplementary affidavit of Kenneth Kaniu sworn on 27th October 2017 and further affidavit of Miriam Boit Kahiro sworn on 19th February 2018.

**3.** The 2nd Respondent, an advocate of the High Court of Kenya, was at the time of her resignation from the petitioner's employment on 30th September 2014, the petitioner's Head of Legal and Assistant Company Secretary. The petitioner filed a complaint before the 1st Respondent, a tribunal on 26th November 2014 complaining of professional misconduct against the 2nd Respondent herein as set out in the affidavit sworn by Jude Brian Olouch on 25th November 2012, a copy annexed to the petition and marked **"KK1"** of the supporting affidavit. The basis of the complaint is that the 2nd Respondent while being employed by the petitioner, she acted in breach of her professional duties owed to the petitioner.

**4.** That while the complaint was still pending determination before the 1st Respondent, the tribunal herein, the 2nd Respondent filed a Notice of Motion dated 10th April 2017 *(the Discovery Application)* seeking production of certain documents by the petitioner which documents included the following:-

> **"a) Legal Audit report prepared by the firm of Coulson Harney LLP, in 20014.**
>
> **b) Forensic Audit Report prepared by KPMG.**
>
> **c) All minutes of the Investment Committee of the Britam Group; and**
>
> **d) The Settlement Agreement(s) between BRITAM/BAAM and the Acorn Group with respect to civil suits Hccc Nos. 352 of 2014, 353 of 2014, 354 of 2014, 361 of 2014 and 362 of 2014."**

**5.** The Discovery Application was opposed by the petitioner on various basis, such as of the documents being not relevant, being protected by legal privilege; the settlement agreement being confidential and affecting the rights of a third party and being commercial sensitive and confidential information which precluded the discovery of the Requested Documents. The 1st Respondent considered the application and allowed Discovery Application and ordered inter-alia; that the petitioner produces the Requested Documents and the petitioner being aggrieved preferred filing of the petition. The grounds upon which the petition is made are set out in the petition as well as the supporting affidavit and further affidavit.

**6.** The petitioner aver, that it is aggrieved with the Ruling and the conduct of the 1st and 2nd Respondents in that it is inter-alia; a violation of its constitutional rights guaranteed under Article 47, 50, 31, 40 and 27 of the Constitution. That further it is averred by section 62 of the Advocates Act, the petitioner urges it was denied a right of appeal in relation to a decision of the Tribunal, yet an Advocate against whom a complaint has been made, has a right of appeal.

**The 1st and 4th Respondents Case**

**7.** The 1st Respondent response is that he petitioner was a complainant in the Advocates Tribunal Miscellaneous Cause Number 5 of 2015 in which the petitioner was alleging, that the 2ndRespondent had breached her professional duty while in the employment of the petitioner. The 2nd Respondent filed her Response and also filed an application to have the petitioner produce several documents which were in the custody of the petitioner. The petitioner opposed the application on the basis the document enjoyed some privilege beside being irrelevant for the purpose of the complaint. That on 16th October 2017, the 1st Respondent summoned the petitioner to produce the documents which the 2nd Respondent sought in her application within 14 days failing which the complaint stood struck off.

**The 2nd Respondent's Case**

**8.** The 2nd Respondent case is, that the petitioner herein filed a complaint before the 1st Respondent *(the tribunal)*against her claiming, the 2nd Respondent while being an Assistant Corporation Secretary and Head of Legal Department as well as an advocate of the High Court, had breached the following duties allegedly owed to it:-

> **i) Duty to act in utmost good faith in the discharge of the obligations to the Petitioner;**
>
> **ii) Duty to act in the best interests of the Petitioner at all times;**
>
> **iii) Duty to apply due care and skill in the execution of her duties;**
>
> **iv) Duty to disclose any conflict of interest;**
>
> **v) Duty not to profit from her engagement with the Petitioner outside of the just remuneration paid to her in the course of employment; and**
>
> **vi) Duty to confidentiality.**

**9.** That during the time the 2nd Respondent resigned from the petitioner's employment and together with others formed Cytonn Investment Management Limited. The petitioner thereafter filed five civil law suits against **AGL,** its official, as well as 2nd Respondent, her partners

and Cytonn that the parties later entered into agreements and suits withdrawn.

**10.** The 2nd Respondent contention is, that the complaint before the 1st Respondent by the petitioner is not meant to vindicate the integrity and dignity of the noble profession but is motivated by spite and ignoble spirit of vengeance as all inquiries commissioned by the petitioner had vindicated her and the petitioner has suffered no loss. That it was based on that the 2nd Respondent filed an application dated 10th April 2018 (the Disclosure Application before the 1st Respondent, the tribunal, seeking the orders thereto.

**11.** On 16th October 2017, the Tribunal allowed the Application and granted reliefs as set out in its ruling.

**The 3rd Respondent's Case**

**12.** The 3rd Respondent filed grounds of opposition dated 16th September 2019. The 3rd Respondent's case is further that the complaint against the 2nd Respondent was filed with the 1st Respondent and upon hearing the 2nd Respondent's application a ruling was delivered leading to the present petition being preferred against the 1stRespondent's ruling which was delivered on 16th October 2017.

**Analysis and Determination**

**13.** I have very carefully considered the amended petition, the Respondents responses, the parties rival submissions and the issues arising for consideration can be summed up as follows:-

> **a) Whether section 62 of the Advocates Act is unconstitutional in so far as it allegedly deprives a complainant the right to appeal the decision of the Advocates Disciplinary Tribunal but grants an Advocate a right to appeal?**
>
> **b) Are the petitioner's prayers merited?**

**A) Whether section 62 of the Advocates Act is unconstitutional in so far as it allegedly deprives a complainant the right to appeal the decision of the Advocates Disciplinary Tribunal but grants an Advocate a right to appeal?**

**14. Section 62 of the Advocates Act** provides as follows:-

**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."**

**15.** The petitioner herein contends that section 62 of the Advocates Act is unconstitutional in so far as it prevents a party who has lodged a complaint with the tribunal such as the petitioner, from appealing a decision of the Tribunal but on the other hand, allows an advocate against who a complaint has been made to appeal. The petitioner further contends under section 60 of the Advocates Act, the Act only affords the Advocate the right to appeal and not the complainant.

**16.** It is trite, that where the court's are called upon to determine the constitutionality of a provision of a statute *"the judicial branch of the government has only one duty"* to lay the article of the constitution which is invoked beside the statute which is challenged and to decide whether the latter squares with the former (see petition **No. 149 of 2015 GeoffreyAndore vs AG & 2 others (2016)Eklr).**It has further been held, that in determining the constitutionality of a statute a court must be guided by the object and purpose of the impugned statute, which object and purpose can be discerned from the legislation itself **(see petition No. 149 of 2015 Geoffrey Andore vs AG & 2 others (supra).**

**17.** The petitioner in the ruling by the 1st Respondent was ordered to release certain documents it was claiming are privileged documents to the 2nd Respondent after both parties had been heard. The order was not addressed to the petitioner's advocates to produce the said documents but the petitioner was being asked to present the documents to the 2nd Respondent and as such it is clear the questioned documents cannot be claimed to have been enjoying the protection under **section 134 of theEvidence Act.** It should be noted the proceedings at the Disciplinary Tribunal, are quasi-criminal, and the sentence prescribed to the offences for which the 2nd Respondent was accused of are grave which, if proved would lead to her being disbarred from practicing. In view of the nature of the proceedings and sentence, I find such proceedings should have been taken seriously and should have been conducted with tremendous regards in respect of Article 50 of the Constitution of Kenya2010. The impression caused by the 2nd Respondent's application was to have the requested documents to enable her prepare for her defence in accordance with Article 50(2) of the Constitution of Kenya 2010 which protects her right to be facilitated with evidence in preparing her defence. I find that the 1st Respondent was in order in ordering the documents to be released to the 2nd Respondent in order to sufficiently and properly prepare her defence. The ruling was clearly based on Article 50 of the Constitution of Kenya 2010 and relevant law and rules of natural justice. It would in view of the above been a miscarriage of justice for the Tribunal to have ruled otherwise.

**18.** I find it absurd and unbelievable for petitioner to purport they have a right to fair hearing but do not seem to appreciate, that the 2nd Respondent, being accused of serious offence, do not have the right to fair hearing as protected by the Constitution. The rights given in our constitution can be likened with a double edged sword, which cuts both ways when pushed and pulled. It protects both the complainant, who is the petitioner and the accused Advocate, the 2nd Respondent. The selective application of the constitutional right is not only dangerous but if applied would occasion injustice and/or mistrial. I find in the interest of justice, it is proper and just for the tribunal to be accorded a right to access all the material relevant facts in the case in order to make a just determination rather than making a decision based on a technicality, as that is the only way, that the parties' rights to access justice can be accorded to each one of them during the trial at the Tribunal.

**19.** The 3rd Respondent has filed grounds of opposition which the 3rd Respondent relies on. It noted, that section 62 of the Advocates Act is a self-contained section of the Act dealing with an appeal preferred by an Advocate aggrieved by the decision of the Tribunal and not the complainant. It is clear that the said section makes provision for aggrieved advocate and says nothing about the complainant. It does not bar the complainant from taking any action as it only deals with the Advocates. It has a clear meaning and the intent of parliament is clear,I therefore, is explicit. The impugned section 62 of the Advocates Act, does not concern itself with the complainant and as such, it is clear, that was the intention of legislative. From the reading of section 62 when read with section 64 of the Advocates Act, it provides a latitude for the complainant to lodge an appeal and/or participate fully in a hearing, at an appeal level. **Section 64 of theAdvocates Act** provides:-

**Powers of Court**

> **"The Court, after considering the evidence taken by the Tribunal, the report of the Tribunal and the memorandum of appeal, and having heard the parties, and after taking any further evidence, if it thinks fit so to do, may—**
>
> **(a) Refer the report back to the Tribunal with directions for its findings on any specified point; or**
>
> **(b) Confirm, set aside or vary any order made by the Tribunal or substitute therefor such order as it may think fit; CAP. 16 Advocates [Rev. 2017] 36 and may also make such order as to the payment by any person of costs, or otherwise in relation to the appeal, as it may think fit."**

**20.** In the instant petition, the petitioner is not an Advocate. It therefore follows the petitioner need to seek shelter elsewhere; thus in another statute and not under the Advocates Act; if not satisfied with the decision of the Advocates Disciplinary Tribunal.

**21.** The 1st Respondent being a Tribunal, under **Article 169(1) (d) of the Constitution of Kenya 2010,** is considered as a subordinate court which under Article 165(6) and (7) of the Constitution, the High Court exercises supervisory jurisdiction over. The petitioner having been aggrieved by the 1st Respondents ruling, the proper venue to which the petitioner should have made its grievance ought in my view to have been by filing a case before High Court, under Article 165(6) and (7) of the Constitution, invoking High Court's supervisory jurisdiction and powers.

**22.** The petitioner in seeking to have section 62 of the Advocates Act declared unconstitutional urging that the section creates a differentiation between the parties that appear before the Tribunal and creates two classes: an advocate and complainant. I find that the petitioner, assertion cannot stand from the reading of section 62 with section 64 of the Advocates Act, as section 62 deals only with the issues related to an advocate whereas section 64 makes provision for the complainant to lodge an appeal and/or participate fully in the hearing, at an appeal.

**23.** The petitioner in seeking to have section 62 of the Advocates Act declared unconstitutional urges the section directly gives the aggrieved Advocate right to appeal but denies the complainant the same opportunity and as such it discriminates against the complainant. The inconsistently raised and complained of is on what it does not offer and not on what it offers. I have considered the section and Articles referred to by the petitioner and find that it has not been demonstrated how the section it does not fit with the constitution. The section as drawn deals with the appeals preferred by Advocates aggrieved by the decision of the tribunal and not the complainant. It is not ambiguous section but it has a clear meaning. It is also explicit and clearly carries the intention of parliament.

**24.** The objet, purpose and effect of the implementation of section 62 of the Advocates Act does not infringe any right protected under the Constitution but provides for remedy which can be pursued by an Advocate against an order of the Tribunal arising out of complaint made under section 61 of the Advocates Act. It should be noted that the right of appeal under section 62 of the Advocates Act is limited to an order made against an advocate under section 60 of the Advocates Act, as under the said section there is no order which can be made against a complainant. Section 62 when read with section 60 and 64 of the Advocates Act, provides a latitude for the complainant to lodge an appeal and/or participate fully in a hearing at an appeal level.

**25.** It is trite that all statutes and provisions are considered and presumed constitutional and as such the burden of proof that indeed the impugned section is constitutional lies upon the petitioner **(See the Ndyanabo vs Attorney General (2001) EA 495 and U.S Supreme Court in US. Vs Butler, 297 U.S 1 (1936).**

**26.** The constitutional benchmarks against which provision of a statute ought to be examined against are found at Article 24 of the Constitution. In the petition herein the petitioner has not pleaded any specific bench mark(s) as having been offended by the impugned provision. I find, that in the instant petition, it has not been demonstrated that section 62 of the Advocates Act discriminates against the complainant because the section does not concern the complainant. I also find the petitioner has failed to discharge the presumption of its constitutionality, as the Act provides for participation of the petitioner *(complainant)* in cases where decision of the tribunal are appealed and finally the presumption of constitutionality of section 62 of the Advocates Act cannot be overturned by merely averring that it prevents the complainant from appealing the tribunals decision. In the case **of Olum&another vs Attorney General (2002) E.A** the court held:-

> **"To determine the constitutionality of a section of a statute or an Act of Parliament, the Court has to consider the purpose and effect of the impugned statute or section thereof. If its purpose does not infringe a right guaranteed by the Constitution,**

**the Court has to go further and examine the effect of the implementation. If either its purpose or the effect of its implementation infringes a right guaranteed by the Constitution, the impugned statute or section thereof shall be declared unconstitutional."**

**27.** Further in the case of **U.S Supreme Court in U.S vs Bulter,297 U.S 1 (1936)** the court dealing with similar issue expressed itself as follows:-

**"When an Act of Congress is appropriately challenged in the courts as not conforming to the constitutional mandate, the judicial branch of the government has only one duty; to lay the article of the Constitution which is invoked beside the statute which is challenged and to decide whether the letter squares with the former. All the court does, or can do, is to announce its considered judgment upon the question. The only power it has, if such it may be called, is the power of judgment. This court neither approves nor condemns any legislative policy. Its delicate and difficult office is to ascertain and declare whether the legislation is in accordance with, or in contravention of, the provisions of the Constitution; and, having done that, its duty ends."**

**28.** A quick revisit of section 62 of the Advocates Act reveal that the right of appeal conferred under section 62 of the Advocates Act is limited to an order made under section 60 and that there is no right of appeal against an order made under section 58 of the Act. From the foregoing I find no discrimination as the 2nd Respondent could neither have appealed if the disclosureapplication had been dismissed. In view of the above I agree with submissions by the counsel for the 2nd Respondent, that no issue arises before this Honourable Court as to whether or not restricting the right of appeal in respect to orders made under section 60 of the Advocates Act passes constitutional master as the Tribunal has not made a decision under that section. I find that in the instant petition, there is no justifiable constitutional controversy presented with respect to section 62 of the Advocates Act. I find that the petitioner has not established a denial of equal protection of the law herein because the 2nd Respondent could not have appealed under section 62 but on an order made under section 60 of the Act. In view of the foregoing and noting section 62 of the Advocates Act provides for matters in relation to Advocates, for which the petitioner is not an Advocate, and there being section 60 and 64 of the Advocates Act providing latitude for the complainant to lodge an appeal and/or participate fully in hearing of an appeal, I find that section 62 of the Advocates Act is not unconstitutional since the petitioner is not an advocate and can always seek redress from elsewhere and as provided from other provisions of the law.

**B) Are the petitioner's prayers merited?**

**29.** The 1st Respondent through a ruling dated 16th October 2017, allowed the 2nd Respondent's application in the following terms:-

**"a) The Complainant is to issue copies of the documents cited in the application to the Advocate forthwith;**

**b) Should the Complainant fail to provide the documents as ordered within 14 days, the complaint is to stand as struck out. Parties are at liberty to apply;**

**c) Upon compliance with the above orders, parties to file and exchange any further affidavits within 30 days of the expiry of the 14 day period for the provision of documents;**

**d) Parties to file their respective submissions of no more than 4 pages each;**

**e) Hearing to be conducted by way of oral submissions to be limited to 15 minutes for the Complainant and 10 minutes for the Advocates;**

**f) Hearing to be on 19th March 2018;**

**g) Costs to abide the cause."**

**30.** From the above ruling the petitioner preferred to file the present petition seeking various orders.

**31.** The Respondents contend the petition is not properly before this Honourable Court terming the same as an abuse of this court's process on the grounds, that section 62 and 64 of the Advocates Act and Article 165 of the Constitution of Kenya 2010 behooved the petitioner to file an appeal but instead choose to file a petition alleging violation of rights. It is further contended the petitioner has failed to make out a case for any constitutional violation warranting the grant for any relief either as sought or at all. It is further contended, that even if this is a case of alleged error by the Tribunal it is a subject matter of appeal which the petitioner now seeks to transmute into a case of serious constitutional violations of Article 47, 50, 31 and 40 of the Constitution. It is petitioner's grounds that, the Tribunal got the law wrong resulting into violation of its rights under Articles 50, 47, 31 and 40. It is contended by the Respondents the petition is based on impossible boot-strapping, claiming misreading and/or misinterpretation of various statutory provisions by the Tribunal contrary to the self-serving argument of a petitioner and changing the alleged errors to amount to violations of its multiple rights under the constitution. The Respondents contend further such boot-strapping is not legally available for it is well-settled law, that a statutory violation does not make a constitutional violation **(see Turkana County Government & 20 others vs AG & others (2016) eKLR.**

**32.** In **Harrkinson vs Attorney General of Trinidad and Tobago[1980] AC 265,**it was held that;

**"The notion that whenever there is a failure by an organ of Government or a Public authority or public office to comply with the law this necessarily entails the contravention of some human rights or fundamental freedoms guaranteed to individuals by Chapter 1 of the Constitution is fallacious. The right to apply to the High Court under Section 6 of the Constitution for redress when any human right or fundamental freedoms is or is likely to be contravened, is an important safeguard of those**

**rights and freedoms; but its value will be diminished if it is allowed to be misused as a general substitute for the normal procedures for invoking judicial control of administrative action."**

**33.** Further in case of **Speaker of National Assembly vs JamesNjengaKarume [1992] eKLR,** where theCourt of Appealheld that;

**"....there is considerable merit in the submission that where 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. We observe without expressing a concluded view that Order 53 of the Civil Procedure Rules cannot oust clear constitutional and statutory provisions."**

**34.** It is trite, that where there is a legal expression for the process by which a party challenges as erroneous, a decision of a lower judicial body it believes *(rightly orwrongly)* to have been made in error should appeal. It is basic that a right of appeal is statutory and unless expressly conferred by the relevant statute, it is not available. A constitutional petition is not and cannot be used to make an end-run around an appeal which is statutorily unavailable. It is wholly within the legislative competence of Parliament and Parliament alone, under Article 165(3) of our Constitution, the existence, nature and extent of such a right of appeal from the Tribunal to the High Court or any other Court.

**35.** It should be admitted and accepted by all litigants that the tribunal such as the 1st Respondent herein in acting fully within its jurisdiction and upon discharging its Adjudicative risk, which involves evaluation of arguments by both sides, and not rubber stamping those of one side or run the risk of being accused of outright bias, the tribunal, just like any courts, have a duty to decide. In every decision inevitably there will be those who would be perceived as losers and winners at the conclusion of the matter in adversarial system. The constitutional rights of aggrieved litigant are not in my view violated by such loss in regard of the decision which they regard as wrong or erroneous.

**36.** Under Article 165(6) and (7) of the Constitution, the High court has supervisory jurisdiction over subordinate courts, which include tribunals. The proper procedure, with adequate safeguard for the petitioner could have been to file either an appeal under Article 165(6) and (7) of the Constitution seeking that the High Court to exercise its supervisory jurisdiction over the subject matter instead of filing a constitutional reference. **(See Harrikinson vs Attorney General of Trinidad and Tobego(1980) AC (supra).**

**37.** In **Alphonse MwangemiMunga& 10 others vs AfricanSafari Club[2008] eKLR** Justice J.G. Nyamu and Justice R.P.V Wendoh fully embraced the decision in Harrikissoon Case. In their learned judgment they made conclusion that:-

**"….parties should make use of the normal procedures under the various laws to pursue their remedies instead of all of them moving to the constitutional court and making constitutional issues of what is not. They have as a result lost valuable time to pursue their contractual claims and/or to have the industrial court settle the trade dispute (if any) relating to this matter. The upshot of this petition is that it is an abuse of the court process and is hereby dismissed….in view of the authorities cited we see no reason why it was in the first place filed as a constitutional application."**

**38.** I am alive to the fact, that this court has wider jurisdiction in terms of the orders it can grant but such exercise of such discretionary powers should be used judiciously and in accordance with the provisions of the law for enforcement of the constitution, so as to do justice. Upon considering all the facts of this petition and the relevant provisions of the law, I am convinced the petitioners remedy for the alleged breach of the trial procedure and rights, lies in filing an appeal in the High Court, but not filing a constitutional reference as is the case in this matter. The petitionas filed is an abuse of the process of the court and it is for striking out.

**39.** In the case of **Alphonse Mwangemi**(cited above) the High Court stated in their judgment that:-

**"…In our considered view this application is a total abuse of the court process because notwithstanding the court of appeal's decision in Rashid OdhiamboAlloggoh& 245 others vs Haco Industries CA 110/01 where the court said that once one alleges violation or threatened violation of his fundamental rights the court should hear him, that does not give license to every litigant to come to court by way of a constitutional application even where there is no constitutional issue arising and where there are adequate remedies provided in other laws to cover such situations. Further that the constitution is the supreme law of the law but it has to be read together with other laws made by parliament and should not be construed as to be disruptive of the other laws in the administration of justice."**

**40.** I find and hold, that under **Article 165 (6) and (7) of theConstitution of Kenya 2010,** the High Court has supervisory jurisdiction over subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function but not over a superior court. It is therefore clear, that for the purposes of carrying out the mandate under Article 165(6) of the Constitution, the High Court may under Article 165(7) of the constitution call for the record of any proceedings before any subordinate court or person, body or authority and may make any order or give any directions appropriate to ensure the fair administration of justice. Having said that much I find that the petition is not properly before this court. It is my view that as the petitioner sought to challenge the decision of the Advocates Disciplinary Tribunal it should have done so by way of an application under Article 165(6) and (7) of the constitution by seeking the High Court intervention, to set aside the tribunal's decision and not by way of constitutional reference as is the case in this petition.

**41.** The upshot is that the petition is without merit and is accordingly dismissed with costs.

**Dated,signed and delivered at Nairobi this 14thday of November, 2019.**

**……**

**J .A. MAKAU**

**JUDGE**