



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
CIVIL APPEAL NO. 3 OF 2016

CHARLES WARUINGI KIMANI.....APPELLANT

VERSUS

TITUS KANYI NDURUMO.....1ST RESPONDENT

ADVOCATES DISCIPLINARY TRIBUNAL.....2ND RESPONDENT

RULING

The Applicant Charles Waruingi Kimani has approached this court by way of what he refers to as an application dated the 29th March, 2016 under Article 165 of the Constitution seeking the following orders;

- (1) The advocates' disciplinary tribunal has delayed producing the file from which they might have derived their judgment which shows the judgment was baseless and therefore cannot be relied on.
- (2) That the fact that the advocates' disciplinary tribunal has custody of the file and has delayed to release it to the Appeal Court shows that they have hidden agenda with the file which is unlawful according to the law.

Though he has referred to the documents that he filed on 29th March 2016, what he refers to as an application is not clear what sort of a document it is, but in the interest of justice and under article 159 (2) (d) of the Constitution, this court shall proceed and consider the same.

It is supported by the applicant's affidavit which he has titled as a replying affidavit. In the said affidavit, he avers that the proceedings of Advocate's Disciplinary Tribunal and the judgment therein lacks merits and has urged this court to dismiss it.

The first Respondent filed grounds of opposition on 24th August 2016 and relies on the following grounds;

- (1) That application is misconceived, bad in law, frivolous and vexatious and has no merits.
- (2) That the application is in law incompetent and fatally defective.
- (3) That the application was filed in court is an afterthought and in bad faith.

(4) That the application dated 29th March 2016 is meant to waste precious judicial time as the application does not seek any reliefs from the court.

(5) That Article 165 (3) (b) has no relevant application in this matter. Besides, matters relating to violation of Bills under Article 165 of the Constitution should be dealt with by the Constitutional & Judicial Review Division and not in the High Court Civil Division.

(6) That the application is not supported by any cogent facts and evidence.

The 2nd Respondent on its part filed a preliminary objection on the 27th September 2016, the main ground being that, the appellant has no right of appeal against the decision of the advocates Disciplinary Tribunal as provided in Section 62 of the Advocates Act.

When the application came up for hearing, parties made oral submissions. On his part the applicant submitted that he had been denied his Constitutional rights. That he applied for the proceedings from the Advocates Disciplinary Tribunal and the same were availed to him in March 2016. On the preliminary objection it was his submission that the same is not valid in law because he is entitled to be heard. He relied on his affidavit in support of the application.

The first Respondent opposed the application and relied on the grounds of opposition. He also told the court that he was supporting the preliminary objection by the 2nd Respondent. He submitted that the applicant has not sought orders against him and that the application did not make any sense.

Counsel for the 2nd Respondent submitted that it is not clear what orders the applicant has sought. She relied on her preliminary objection that the applicant has no right of appeal under Section 62 (1) of the Advocates' Act. She further submitted that the applicant ought to have filed suit against the 1st respondent and if he was not satisfied with the procedure before the Advocates Disciplinary Tribunal, he ought to have challenged the same by way of Judicial Review.

In his response to the submissions by the respondents, the applicant submitted that it was his right under the Constitution to file documents.

The court has considered the "*application*", together with the material before it. What is clear to me, is that the matter herein arose from proceedings before the Advocate's Disciplinary Tribunal which the applicant was not satisfied with.

As rightly submitted by the Respondents, it is not clear what orders the applicant is seeking and indeed the affidavit and the prayers are not clear to the court. He has not sought any orders against the first respondent and the only grievance he seems to have against him, arises out of the proceedings before the Disciplinary Tribunal.

With regard to the preliminary objection by the 2nd Respondent, it is clear that the applicant has no right of appeal against the decision of the Advocates Disciplinary Tribunal and his remedy if any, lies elsewhere.

In the premises aforesaid, the court finds that, the application dated the 29th day of March 2016 has no merits and the same is dismissed but with no orders as to costs.

Dated and delivered at Nairobi this 2nd Day of February, 2017.

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LUCY NJUGUNA

JUDGE

In the Presence of

..... for the Appellant

..... for the Respondent