



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NYERI

ELCA NO. 17 OF 2019 AS CONSOLIDATED WITH ELCA NO.24 OF 2019

NYERI WATER AND SEWERAGE COMPANY LTD.....APPELLANT

VERSUS

BARNABAS KARIUKI.....RESPONDENT

RULING

1. The Appellant herein, being dissatisfied with the Judgment of the Trial Magistrate, *in the Chief Magistrate Court at Nyeri in CMELC Case No. 65 of 2018* lodged his Appeal being ELCA No. 17 of 2019 which was consolidated with ELCA No. 24 of 2019 to which Judgment was set to be delivered on the 19th March 2020. However owing to the Covid-19 pandemic and its effect globally, Judgment had been differed to the 8th June 2020.

2. While awaiting the Judgment date, Counsel for the Appellant, vide his application dated the 5th May 2020 under a certificate of urgency, sought for orders to arrest the delivery of the said Judgment and for the striking out in *limine litis* the Memorandum of Appeal and Pleadings filed by the firm of R.V Mukoya & Company Advocates.

3. The Application was supported by an affidavit sworn on the 5th May 2020 as well as a Supplementary Affidavit sworn on the 29th May 2020 by M/S Richard Kamotho Gichimu, an Advocate of the High Court of Kenya and Counsel for the Applicant/Appellant herein to the effect that;

i. The Court be pleased to arrest and/or stay other proceedings and the delivery of the judgment scheduled for delivery on 8th May 2020.

ii. The Memorandum of Appeal filed 1st August 2019 and all other the pleadings filed by R.V Mukoya & Company Advocates on behalf of Barnabas Kariuki (the Respondent) be struck out in *limine litis*.

iii. An order to issue that the pleadings filed by Mr. Charles Kasamani Lutta purportedly practicing in the firm of R.V Mukoya & Company Advocates be struck out and the Appeal by the Appellant/Applicant be allowed with costs being paid by the purported Advocate personally.

4. In their supplementary Affidavit sworn on the 29th May 2020, Counsel for the Applicant sought for the Respondent's Replying affidavit to be struck out having been drawn, filed and served by the Firm of Muma Nyagaka Advocates who were not properly on record which was in contravention of the provisions of Order 9 Rule 9 of the Civil Procedure Rules.

5. The Application was opposed by the Respondent's Replying affidavit dated the 21st May 2020 to which he deponed that on the 5th November 2015 he had instructed the firm of Kasamani & Company Advocates to represent him in a claim for damages against the Appellant herein pursuant to which around January 2018 he had filed a notice of Change of Advocates to which he had then instructed the firm of R.V Mukoya & Company Advocates to act for him in place of the firm of Kasamani & Company Advocates.

6. He further deponed that all the pleadings had been drawn, filed and presented in Court by the firm of R.V Mukoya & Company Advocates which had retained Mr. Charles Kasamani Lutta between the year of 2018 -2019 purely as a consultant and for providing guidance in law.

7. That subsequently in the year 2020, he had learned that Vincent Mukoya Kasamani who had been the sole proprietor in the firm of R.V Mukoya & Company Advocates had ceased operation therein to which he had instructed the firm of Muma Nyagaka & Company Advocates who came on record for him by filing their Notice of Appointment.

8. That he being a successful litigate before the trial Court ought not be denied the opportunity to know the outcome of the Applicant's

Appeal because there was no evidence that the pleadings thereto had been drawn, signed and filed by Mr. Charles Kasamani as alleged by the Applicant and further that the matter raised by the Applicant had been overtaken by events.

9. The Respondent deponed that if at all there had been improper conduct by Mr. Charles Kasamani, then the same can only attract Court sanction or an investigation by the relevant authority but that such conduct could not be used to delay justice.

10. The Application was canvassed by way of written submissions to wit:

Applicant's submission.

11. The Applicant's submission was that on several occasions Mr. Charles Kasamani Lutta and represented himself as an Advocate thereby drafting correspondences, appearing in Court on behalf of the Respondent and had even drawn and filed pleadings under the guise of R.V Mukoya & Company Advocates, a nonexistence firm of Advocates.

12. The Applicant further submitted, while relying on Sections 2, 9 and 34 of the Advocates Act that the fate of pleadings drawn and filed by an unqualified person was to have the same struck off with costs against the purported Advocate.

13. It was their submission that they had demonstrated that indeed the Respondent had been represented by an unqualified person and that indeed the pleadings had been drawn and filed by Mr. Charles Kasamani Lutta who had been struck from the Roll of Advocates pursuant to the orders of the Disciplinary Tribunal in Disciplinary Cause No 271 of 2007 with effect from 19th September 2016.

14. The Applicant thus invited the Court to take judicial notice of the following facts;

- i. That the Supplementary record of Appeal and other pleadings having been filed by the firm of R.V Mukoya & Company Advocates, the Law society of Kenya vide its letter dated the 4th May 2020 annexed as RK 5 (b) was categorical that they did not have any Advocate who had declared to practice law in the said law firm.
- ii. That the pleadings filed by the alleged firm of R.V Mukoya & Company Advocates, being the Supplementary Record of Appeal filed on 18th December 2020, the mention Note dated 4th October 2019, Memorandum of Appeal filed on 1st August 2019 as well as all communication to Counsel all bore Mr. Charles Kasamani Lutta's email address as the contact Counsel.
- iii. That on the 25th June 2019 Mr. Charles Kasamani Lutta had introduced himself in Court as Mr. Mukoya yet via the letter from the Law society herein above mentioned, it had been made clear that Mr. Vincent Mukoya worked for Aluvale & Company Advocates.
- iv. That on the 29th April 2020 Mr. Charles Kasamani Lutta had written an e-mail, a copy which was annexed as RK 3, to the law Society of Kenya to which he purported to have been the Advocate acting for the Respondent.
- v. That on the 7th May 2020 there had been a "Whatsapp" group that had been created for ease of communication to parties who had judgments pending delivery before the Court wherein Mr. Charles Kasamani Lutta had been one of the Advocates for the parties
- vi. That indeed on the 8th May 2020 Mr. Charles Kasamani Lutta had appeared before this Court via video link conferencing where he had addressed it as an Advocate on behalf of the Respondent.

15. The Applicant submitted that all this facts had not been denied by Mr. Charles Kasamani Lutta and neither had Mr Vincent Mukoya filed any response either. The Applicant relied on the decided cases in **Samaki Industries (Nairobi) Ltd vs Samaki Industries (K) Civil Appeal No 203 of 1995** and **Barbra Georgina Khaemba vs Cabinet Secretary, National Treasury & Another [2016] eKLR** to submit that the pleadings herein having been filed by unqualified persons were incurably defective and the only recourse was to strike them out.

16. That in the case of **Kasamani Charles Lutta & 4 Others vs Amani National Congress & 3 Others [2017] eKLR** the Court had held that an Advocate whose name had been struck from the Roll of Advocates could not draw or sign legal documents since those documents were void for all purposes.

17. Counsel further submitted that the defective pleadings filed on behalf of the Respondent were not curable by appointing another Counsel as the same were a nullity and incapable of being regularized. In so submitting, he relied on the case in **Isaac Ndungu Kuguru & Another vs Newton Siele & 2 Others [2014] eKLR** where the Court held that the competence of an Advocate on record at the time of filing the suit went to the root of the validity and competency of the pleadings or documents drawn by him.

18. That the firm of Muma Nyagaka & Co Advocates could not cure the defect in the pleadings filed by a non-existence firm and an unqualified advocate. Counsel sought for the Application to be allowed with costs to be paid by Mr. Charles Kasamani Lutta.

Respondent's submission.

19. The Respondent's submissions were drawn and filed by the firm of Muma Nyagaka & Co Advocates on the 2nd June 2020 in which Counsel submitted that by the time the Plaintiff in this matter was drawn and filed, Mr. Charles Kasamani Lutta practicing in the firm of Kasamani & Co Advocates was in active practice and therefore the instructions had been properly taken in compliance with the provisions of

Section 34 of that Advocates Act.

20. That the firm of R.V Mukoya & Company Advocates took over the conduct of the matter on the 11th April 2018 by filing a Notice of Change of Advocates wherein all pleadings had been drawn and filed by the said firm.

21. That there was no iota of truth/evidence as submitted by Counsel for the Applicant to the effect that the Respondent's pleadings had been drawn and signed by Mr. Charles Kasamani Lutta so as to render the pleadings filed by the firm of R.V Mukoya & Company Advocates void. Counsel relied on the decided case in **National Bank Ltd vs Anaj Warehousing Limited [2015] eKLR** to buttress his submission.

22. That the firm of Muma Nyagaka & Co Advocates took over the conduct of the matter at the Appeal stage and therefore under Order 9 Rule 9 of the Civil Procedure Rules, the firm did not need leave of the Court or consent from the previous Counsel. Reliance was placed on the decided case in **Kenya Pipeline Company vs Lucy Njoki Njeru [2014] eKLR** and **Wilfred Mbogo & 5 Others vs Nelson Mwaniki [2016] eKLR**.

23. Counsel further submitted that it could not be said that the current firm on record could not cure the defect in the pleadings previously filed because the same had been drawn and filed by a legitimate firm of R.V Mukoya & Company Advocates whose establishment or existence was not within the purview of the Court to speculate and wonder in conjecture on how the alleged firm operated.

24. That the Respondent could not be held responsible for the predicament facing Mr. Charles Kasamani Lutta as he was not privy to the exchange of short messages and/or private communication between Counsel for the Applicant and Mr. Charles Kasamani Lutta and which communication did not affect his rights and/or cause of action. Counsel relied on the decided case in **Republic vs Resident Magistrate's Court at Kiambu ex-parte Geoffrey Kariuki & 9 Others [2106] eKLR** which case in my humble opinion is distinguishable with the present case by virtue of the fact that in that case Counsel had not taken out his practicing certificate which is a totally different issue with the present case where Counsel had been struck from the Roll of Advocates.

25. Counsel further submitted that the overriding objective of the Court existed for exigencies of this nature as was captured in Section 1A of the Civil Procedure Act. He and sought for the Court to disallow the Applicant's Application with costs so as to attain the said objective.

Determination.

26. I have read the respective pleadings, the documents annexed thereof in support of and against the case, the law and authorities herein cited as well as the submissions of the both Counsel for the parties as summarized herein above.

27. The issues that arise for determination in this matter are:

- i. What is the status of Mr. Charles Kasamani Lutta in relation to the Law Society of Kenya?
- ii. Whether Mr Charles Kasamani Lutta subsequently drew, signed, filed pleadings on behalf of, or represented the Respondent herein after having been struck from the Roll of Advocates.
- iii. Whether the firm of R.V Mukoya & Company Advocates is authorized by Law or qualified to practice, draw, file pleadings or represent the Respondent.
- iv. Whether the firm of Muma Nyagaka & Co Advocates is properly on record.
- v. Whether the said pleadings should be struck out for being a nullity.
- vi. Who should pay the cost?

28. On the first issue for determination, I have gained sight of the Applicants annexure to his Application dated the 5th May 2020 which annexure was marked as RK 5(b) being a letter dated the 4th May 2020 from the law Society of Kenya. Indeed from the contents of the letter the same is to the effect that **Mr. Charles Kasamani Lutta was struck from the Roll of Advocates and ceased to be an Advocate of the High Court of Kenya and a Member of the Law Society of Kenya pursuant to the orders of the Disciplinary Tribunal in Disciplinary Cause No 271 of 2007 with effect from 19th September 2016 and therefore he could neither practice law or run a law firm.**

29. Having laid the background of the status of Mr. Charles Kasamani Lutta, I shall now consider the second issue for determination to wit whether Mr Charles Kasamani Lutta drew, signed, filed pleadings or represented the Respondent herein pursuant to him being struck from the Roll of Advocates.

30. From the Court record, I note that the firm of Kasamani & Company Advocates came on record for the Plaintiff/Respondent in the trial Court on the 5th November 2015 vide a Notice of Change of Advocate wherein Counsel sought to amend their Plaintiff. The Plaintiff which was amended on the 27th July 2016 was filed on the 29th July 2016.

31. The firm of Kasamani & Company Advocates filed their reply to the Defence on the 23rd November 2016 by which time Mr. Charles Kasamani Lutta had been struck from the Roll of Advocates.

32. On the 22nd September 2016, the record is clear that the firm of Kasamani & Company Advocates represented the Respondent before the

Deputy Registrar wherein after Mr. Charles Kasamani Lutta appeared before Justice L. Waithaka on the 1st December 2016 seeking for a hearing date for the Respondent's case.

33. On the 14th September 2017, again the record is clear that the firm of Kasamani & Company Advocates had appeared for the Respondent.

34. On the 6th April 2018, there had been a notice of Change of Advocates wherein the firm of R.V Mukoya & Company Advocates came on record for the Respondent. On the 19th April 2018, 4th September 2018, Mr Mukoya Advocate appeared for the Respondent whereon on the 15th January 2019 the matter proceeded for hearing and Mr. Mukoya Advocate appeared for the Plaintiff/Respondent, took evidence and thereafter closed the Plaintiff's case.

35. Parties filed their respective submissions wherein the Respondent's written submission dated the 24th January 2019 was allegedly drawn and filed on the 25th January 2019 by the firm of R.V Mukoya & Company Advocates.

36. On the 26th February 2019, the Coram on the Court record indicates that the firm of Kasamani & Company Advocates was on record for the Plaintiff/Respondent, on the 12th March 2019, 14th April 2019, 26th April 2019 Mr. Charles Kasamani Lutta, appeared in Court for the Plaintiff/Respondent to take the judgment, whereas on the 30th April 2019 one Gatuya Advocate took the judgment on behalf of Kasamani & Company Advocates

37. On the 19th May 2019 a party to party Plaintiff's bill of cost was allegedly drawn and filed by the firm of R.V Mukoya & Company Advocates.

38. On the 4th June 2019 the record indicates that Mr. Charles Kasamani Lutta was present in Court and held brief for Mr. Mukoya Advocate for the Respondent on an Application for stay of execution that had been filed by the Applicant in this matter.

39. On the 26th June 2016 the record is clear that one Mr Mukoya Advocate was present for the Respondent wherein on the 12th July 2019 and 26th July 2019, Mr. Charles Kasamani Lutta was present in Court to receive the Ruling wherein after he had sought for the typed proceedings.

40. The Applicant/Appellant in this matter filed an Appeal in ELCA No 17 of 2019 challenging the Judgment delivered by the trial Court whereas the Respondent also filed an Appeal vide ELCA No 24 of 2019 challenging the Ruling on stay of execution. Both Appeals were consolidated on the 13th November 2019 with ELCA of 17 of 2019 being the lead file.

41. From the Court record, it is clear that the pattern obtaining in the Magistrate's Court had been repeated by Mr. Charles Kasamani Lutta in this Court to wit, on the 13th November 2019 and 23rd January 2020 Mr Gathiaga Mwangi held brief for Mr. Charles Kasamani Lutta for the Respondent.

42. Judgment had been scheduled for delivery on the 8th May 2010 via Zoom conferencing wherein again it could be noted from the record that Mr. Charles Kasamani Lutta appeared in the conference room before myself and on behalf of the Respondent where he had even addressed the Court.

43. I have taken note of the written submission dated the 24th January 2019 which was drawn and filed on the 25th January 2019, the party to party Plaintiff's bill of cost drawn on the 19th May 2019, the signature on the record of Appeal dated the 18th September 2019 and the letter dated the 27th September 2019 to the Deputy Register of this court, to which I have compared to the documents executed by Mr. Charles Kasamani Lutta before he was struck from the Roll of Advocates and of significance is that the writings have a striking resemblance.

44. I have also taken a keen look at both the letter heads of R. V Mukoya & Company Advocates and Kasamani and Company Advocates and I note that they are identical bearing the same credentials, address and e-mail addresses herein, the Advocates in both the law firms being Mr. Charles Kasamani and Mr. Vincent Mukoya Kasamani.

45. I find that from the modus operandi herein enumerated as well as documents flagged out thereof, that indeed Mr Charles Kasamani Lutta drew, signed, filed pleadings on behalf of, or represented the Respondent herein even after he had been struck from the roll of Advocates.

46. On the issue as to whether the firm of R.V Mukoya & Company Advocates is authorized by Law or qualified to practice, draw, file pleadings or represent the Respondent, again the Court was drawn to the Applicant's annexure herein marked as RK 5(b) to wit a letter form the Law society of Kenya dated the 4th May 2020 whose contents were clear at paragraph 3 and 4 to wit that:

"we confirm that Vincent Mukoya Kasamani Advocate has paid for..... he declared to be an Associate in the firm of Aluvale & Co Advocates....."

Kindly note that we do not have any Advocate who had declared to practice in the firm of R.V Mukoya & Company Advocates"

47. The said confirmation speaks for itself and I shall have nothing else to add thereto.

48. Having said as above the next issue that I need to determine is whether the firm of Muma Nyagaka & Co Advocates is properly on record

for the Respondent. From the proceedings herein, it is clear that the Applicant having filed the present application dated the 5th May 2020, the firm of Muma Nyagaka & Co Advocates filed their Notice of Appointment on the 21st May 2020 to come on record for the Respondent.

49. Order 9 Rule 5 of the Civil Procedure Rules, 2010 provides for change of Advocates as follows:

“A Party suing or defending by an Advocate shall be at liberty to change his Advocate in any cause or matter, without an order for that purpose, but unless and until notice of any change of Advocate is filed in Court in which such cause or matter is proceedings and served in accordance with Rule 5, the former Advocate shall, subject to rules 12 and 13 be considered the Advocate of the party until the final conclusion of the cause or matter, including any review or Appeal.”

50. Order 9 Rule 9 of the Civil Procedure Rules, 2010 provides for change of Advocates to be effected by order of court or consent of parties to wit:

When there is a change of Advocate, or when a party decides to act in person having previously engaged an Advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the Court —

(a) upon an application with notice to all the parties; or

*(b) upon a consent filed between the outgoing Advocate and **the proposed incoming Advocate or party intending to act in person as the case may be**”*

51. Clearly there is a distinction in these two provisions of the law to which under the provisions of Order 9 Rule 5 unless an Advocate has been removed under Rule 13 or withdraws under Rule 13, he/she remains the party’s Advocate to the conclusion of the case. On the other hand, the provisions of Order 9 Rule 9 of the Civil Procedure Rules make it mandatory that for any change of Advocates **after judgment** has been entered to be effected, then there must be an order of the Court upon application with notice to all parties or upon a consent filed between the outgoing Advocate and the proposed incoming Advocate. In the present case Judgment had been rendered and therefore the provision of order 9 rule 9 were applicable herein.

52. Although the Respondent has a Constitutional right to be represented, yet where there are clear provisions of the law regulating the procedure of such representation, the same should be adhered to. The procedure set out under Order 9 Rule 9 above is mandatory and thus cannot be termed as a mere technicality. I therefore find that this procedure was not followed by M/s Muma Nyagaka & Co Advocates, and the said firm is therefore not properly on record, and has no legal standing to move the Court on behalf of the Respondent.

53. The last issue for determination is therefore whether the pleadings herein should be struck out for being a nullity

54. Section 2 of the Advocates Act defines an **unqualified person** as follows:

“a person who is not qualified under section 9 and includes an Advocate who—

(a) is not qualified under section 9;

(b) is not exempt under section 10; and

(c) fails to take out a practising certificate.”

55. Section 9 of the Advocates Act provides as follows:

Subject to this Act, no person shall be qualified to act as an Advocate unless?

(a) he has been admitted as an Advocate;

(b) his name is for the time being on the roll ; and

(c) he has in force a practicing certificate;

56. Further Section 34 provides as follows:-

“(1) No unqualified person shall, either directly or indirectly, take instructions or draw or prepare any document or instrument

(a) relating to the conveyancing of property; or

(b) for, or in relation to, the formation of any limited liability company, whether private or public; or

(c) for, or in relation to, an agreement of partnership or the dissolution thereof; or

(d) for the purpose of filing or opposing a grant of probate or letters of administration; or

(e) for which a fee is prescribed by any order made by the Chief Justice under section 44; or

(f) relating to any other legal proceedings; nor shall any such person accept or receive, directly or indirectly, any fee, gain or reward for the taking of any such instruction or for the drawing or preparation of any such document or instrument: Provided that this subsection shall not apply to—

(i) any public officer drawing or preparing documents or instruments in the course of his duty; or

(ii) any person employed by an Advocate and acting within the scope of that employment; or

(iii) any person employed merely to engross any document or instrument.

(2) Any money received by an unqualified person in contravention of this section may be recovered by the person by whom the same was paid as a civil debt recoverable summarily.

(3) Any person who contravenes subsection (1) shall be guilty of an offence.

(4) This section shall not apply to—

(a) a will or other testamentary instrument; or

(b) a transfer of stock or shares containing no trust or limitation thereof.”

57. Section 34A which is one of the amendments introduced in 2017 states that:-

“Subject to section 10, an Advocate who holds a current practicing certificate shall not file any legal documents in any registry under any law which requires filing of such document by an Advocate, or issue such document for any other professional purpose, unless there is affixed on each such document the stamp or seal issued by the Society under section 23(2A).”

58. It is trite law that for one to qualify as an Advocate he or she must first be admitted as an Advocate, the name must appear on the Roll of Advocates and the person must have a valid practicing certificate. These requirements are couched in mandatory terms and they must all be met. By virtue of Section 27 of the Act, once an Advocate is suspended from practice, the practicing certificate which is in force at the time of suspension is automatically suspended.

59. Mr. Charles Kasamani Lutta having been struck from the Roll of Advocates with effect from 19th September 2016 ceased to be an Advocate within the meaning of Section 9 of the Act but nonetheless, continued practicing as such under an alias name of R.V Mukoya & Company Advocates which firm according to the Law society of Kenya had **no Advocate who had declared to practice** therein. In the process Mr. Charles Kasamani Lutta still took instructions from the Respondent, drafted pleadings and even represented him in Court knowing very well he was not qualified to practice law at the time.

60. The Court having established that there was ample proof that Mr. Charles Kasamani Lutta prepared pleadings, appeared for and prosecuted the Respondent’s matter, renders the pleadings and proceedings illegal. In the case of the **Board of Trustees National Social Security Fund vs Michael Mwaloi C.A Civil Appeal No. 293 of 2014**, the Court of Appeal cited with approval the decision in the Ugandan Court of Appeal in **Makula International Ltd vs. His Eminence Cardinal Nsubuga & Another (1982) H.C.B II** which had held that

“A Court of law cannot sanction what is illegal and illegality once brought to the attention of Court overrides all questions of pleading, including any admission made thereon.”

61. Back home in the case of **Barbra Georgina Khaemba v Central Bank of Kenya & 2 others [2019] eKLR** the Court held as follows:

*It is the Supreme Court decision in **Anaj Warehousing Limited** (supra) that necessitated the National Assembly to amend the Advocates Act by introducing among other provisions sections 34A and 34B because while the law was clear that unqualified persons could not draw legal instruments and pleadings, it was not clear on the validity of such documents. However, a distinction between that case and the instant case is that in this case, the Advocate herein was suspended from the Roll of Advocates subject to Disciplinary Cause Number 18 of 2015 for a period of two years with effect from 19th February, 2018 which automatically suspended his practicing certificate at the time. In the Supreme Court case, however, the Advocate simply failed to take out a practicing certificate which the Supreme Court deemed should not have invalidated the charge drawn by the Advocate for to do so would result in unjust enrichment of the debtor. Secondly, the issue was about an instrument or document of conveyance drawn by an Advocate who did not, at the time of drawing such an instrument or document, have a current practising certificate. Does the same reasoning apply to pleadings drawn and filed in Court by a person whose actions have been found unprofessional and suspended from legal practice? I do not think so. Suspension cannot be equated to failure to take out a practising certificate.*

In the case at hand we are talking of an Advocate who was already suspended from practising as an Advocate at the time of drafting the legal documents. In my view, it would be more harmful to society to encourage such a person to continue practising by holding that legal documents drafted by him or her are valid. The disciplinary proceedings that are meant to maintain high professional standards within the legal profession will amount to nothing, for persons suspended or removed from the Roll of Advocates will

continue receiving instructions, drafting pleadings and earning fees from a profession in which they have been found unfit to practice. The Courts must stress the policy that it does not condone illegalities.

62. The Supreme Court in **National Bank of Kenya Limited v Anaj Warehousing Limited [2015] eKLR** held as follows:

‘The facts of this case, and its clear merits, lead us to a finding and the proper direction in law, that, no instrument or document of conveyance becomes invalid under Section 34(1)(a) of the Advocates Act, only by dint of its having been prepared by an Advocate who at the time was not holding a current practising certificate. The contrary effect is that documents prepared by other categories of unqualified persons, such as non-Advocates, or Advocates whose names have been struck off the roll of Advocates, shall be void for all purposes’. (emphasis added)

63. This Court is bound by the said decision

64. Also of importance to note are provisions of Section 34(1) (f) of the Advocates Act which provides as follows:-

No unqualified person shall, either directly or indirectly, take instructions or draw or prepare any document or instrument relating to any other legal proceedings.....

65. **Sub- rule 3 of the said provision provides that**

Any person who contravenes subsection (1) shall be guilty of an offence

66. The Court finds that Mr. Charles Kasamani Lutta having had illegally drafted pleadings and conducted the proceedings before both the trial Court and this Court, his conduct was inherently fatal to the proceedings as it is an offence against the law for such a person to conduct proceedings before any Court of law.

67. On basis of the above reasons, the pleadings and proceedings of the trial Court as well as the subsequent pleadings and proceedings before this Court are null and void. They are of no legal consequence and cannot be sustained and are therefore struck out.

68. The costs shall be met by Mr. Charles Kasamani Lutta in person.

69. The Deputy Registrar of this Court is directed to transmit to the Law Society of Kenya certified copies of this ruling, pleadings and proceedings for their necessary action.

Dated and delivered at Nyeri this 23rd day of July 2020.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE