REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISCELLANEOUS APPLICATION NO. 436 OF 2015

IN THE MATTER OF THE ADVOCATES ACT, CAP 16 LAWS OF KENYA

IN THE MATTER OF THE LAW REFORM ACT CAP 26 OF THE LAWS OF KENYA

IN THE MATTER OF THE CIVIL PROCEDURE ACT CAP 21 OF THE LAWS OF KENYA

IN THE MATTER OF AN APPLICATION BY THE APPLICANT JOHN WACIRA WAMBUGU, FOR LEAVE TO APPLY FOR ORDERS OF CERTIORARI AND PROHIBITION DIRECTED TO THE DISCIPLINARY TRIBUNAL OF THE LAW SOCIETY OF KENYA (L.S.K)

REPUBLIC…………………….…………………………………….APPLICANT

VERSUS

DISCIPLINARY TRIBUNAL OF THE LAW SOCIETY OF KENYA...........................RESPONDENT

EXPARTE

JOHN WACIRA WAMBUGU...APPLICANT

MONICA NYAKINYUA GEITANGI and PETER NGUNJIRI KAMUNDE....INTERESTED PARTIES

JUDGEMENT

Introduction

1. By a Notice of Motion dated 21st December, 2015, the *ex parte* applicant herein, **John Wacira Wambugu,** seeks the following orders:

> **a) THAT the Honourable court be pleased to issue an Order of Certiorari to quash the Respondents Disciplinary proceedings in Cause No. 139 of 2013 involving John Wacira Wambugu the Applicant herein and the order issued therein on 20th July, 2015 requiring the applicant to pay interest on the disputed principal amount of Kshs. 1,912,612/= only.**
>
> **b) THAT a prohibitory order be issued prohibiting and/or restraining the Respondent Tribunal by itself, servant and/or agent from taking any further steps in the disciplinary cause number 139 of 2013 especially with regard to orders issued on the 2nd of November, 2015 pending hearing of this application and final determination of this application.**

c) THAT costs of this application be met by the Respondents.

Ex Parte Applicant's Case

2. According to the applicant, an advocate of the High Court of Kenya practising under the firm of Wacira Wambugu & Co. Advocates, his firm had been instructed by **Monica Nyakinyua Geitangi** and **Peter Ngunjiri Kamunde** the interested parties herein who were also the complainants in Disciplinary Cause No. 139 of 2013 who are the administrators to the Estate of Livingstone **Geitangi Karuri** (deceased) to pursue a compensation claim on their behalf of the deceased's estate in Nairobi High Court Civil Suit No. 2624 of 1997 - **Monica Geitangi Karuri & 2 Others vs. Zewaria Nyawera**. The said firm was further instructed by the interested parties to act in the succession matter of the Deceased's Estate which it did vide Succession Cause no. 2784 of 1995 and consequently, letters of administration were issued to **Monicah Nyakinyua Geitangi** and **Peter Ngunjiri Kamunde** as the Administrators to the said Estate.

3. It was averred that as a result of disorganisation between the Administrators there was a delay in getting a confirmation of grant to the said Estate thus delaying the process of the firm discharging its duty as Advocates in charge of the said Estate and it is during the said state of disharmony between the Administrators that the proceeding were commenced against the applicant in the Law Society of Kenya Disciplinary Tribunal Cause No. 139 of 2013 by **Peter Ngunjiri Kamunde** and **Monica Nyakinyua Geitangi** through the Advocates Complaint Commission. According to the applicant, after the institution of the said Disciplinary Proceedings, the Administrators (complainants in the Disciplinary Committee) finally agreed to come together and forge a way out of the administration and distribution of the Estate and on a purely "*Without Prejudice*" the parties.

4. It was averred that in the settlement arrangement the parties agreed that the applicant foregoes the claims he had against the complainants which included:-

(i) The Bill of Costs which he had already filed against the complainants which totalled to Kshs. 926,198/= for the two instructions duly carried out by the Applicant.

(ii) The lien over of Motor Vehicle Reg. No. KAE 694L Toyota Salon Car imported from Japan by **Mr. John Wacira Wambugu** at his costs valued at over Kshs. 360,000/= and the value of the business in the name of **Lovito Enterprises** valued at Kshs. 300,000/=.

5. In the applicant's view, he had to forego a total sum of Kshs.1,586,128/= in the consent agreement, which is a colossal amount of money. Thereafter, the parties took account and it was agreed that the applicant was to pay a sum of Kshs.1,479,962/= to the complaints as a condition to have the matter settled which he did.

6. According to the applicant the decision to settle the accounts between the Complainants and himself was communicated to the Respondent herein in good time but despite this the Respondent herein went ahead with the proceedings and penalized the Applicant vide the orders dated 20th July, 2015 demanding inter alia that the Applicant herein pays:-

i. A 12% interest per annum on the Principal sum from the date of receipt of each instalment up to the date the amount was paid to the Complainant.

ii. A fine of Kshs. 100,000/= and costs of Kshs.15,000/= each to the Law Society of Kenya and Advocates Complaints Commission.

7. It was averred that the last communication on issue about the matter was vide a letter dated 28th July from the Respondents herein to the Applicant with the orders as given by the Honourable Committee on the 20th July, 2015 among which was the express communication that '…*as it regards the interest the complaints commission to compute and provide the figure to you within 30 days from the day of the sentence so that you can pay within 60 days from the date of receipt of computation*'. The applicant

deposed that on the 14th of October he received a mention notice from the intended Respondent herein slating the matter for a mention on the 2nd November, 2015 on which date the Respondents went ahead and issued execution orders against the Applicant herein for a computed sum they claimed to be the cumulative interest rate which was not and has not been communicated to the Applicants to date.

8. It was contended by the applicant that as the Respondent herein never raised an objection to the consent settlement between the parties but went ahead and accepted/recorded the consent without any conditions and or alterations, the matter was deemed settled from the conduct of the committee hence the turn of events by the Committee amounts to a procedural flaw as the matter was already settled between the parties and consent duly recorded/accepted by the Respondents without any objection.

9. The applicant averred that he stands at a disadvantage given that he had to let go the lien over Motor Vehicle Reg. No. KAE 694L Toyota Salon Car and the business in the name of **Lovito Enterprises** together with the legal fees for services rendered to the complainants as discussed above in order to arrive at the settlement which is unjust and unfair. He lamented that this amounts to a double jeopardy to him as he is forced to a double loss over services well rendered to his clients who later sought the legal process to evade their responsibility.

Respondent's Case

10. In opposition to the application the Respondent averred that the information relating to the alleged settlement was only coming from the applicant herein without the same being confirmed by the interested parties herein through the Advocates Complaints Commission which acts as the prosecutors.

11. It was averred that at no time did the applicant complain that he had not received computation of the amounts payable by him as interest and that in fact on 2nd November, 2015, the applicant's advocates confirmed knowledge of the same hence the Respondents was satisfied that the applicant knew about the said amounts before issuing the execution order.

12. To the Respondent it followed the laid down procedure in discharging its mandate hence the orders sought herein ought not to be granted.

Interested Parties' Case

13. In opposing the application, the interested parties herein averred that the order of Prohibition as prayed for by the Applicant in the proceedings herein is untenable by dint of the fact that the order of *Certiorari* from which the order of Prohibition stems from cannot issue. To the interested parties, this Application is improperly before this Honourable Court in view of the fact that the order of the Law Society of Kenya Advocates Disciplinary Tribunal which is the subject of *certiorari* herein were issued on 14th April, 2015, which is more than (Nine) Months from the date of the Application herein.

14. The interested parties disclosed that they instructed the Applicant herein **John Wambugu Wacira**, an Advocate of the High Court of Kenya to represent the Estate of Livingstone **Geitangi Karuri** (deceased) in an accident compensation claim for damages in Nairobi High Court Civil Case Number 2624 of 1997 and that at the conclusion of the said suit, judgment was entered in favour of the Estate of Livingstone Geitangi Karuri (deceased) and the Applicant herein received on their behalf and on behalf of the Estate of Livingstone Geitangi Karuri (deceased) a decretal sum of Kshs. 1,912,612/= from Blue Shield Insurance Company Limited in various instalments between the years 2001 and 2004.

15. Despite receipt of the said sum, it was averred that the Applicant herein failed refused and/or neglected to remit the same to the Estate of Livingstone Geitangi Karuri (deceased) and hence the matter was referred to the Advocates Complaints Commission on 27th May, 2012 and on 9th August, 2012, the Advocates Complaints Commission communicated the particulars of the complaint to Applicant.

16. According to the interested parties, on 12th February, 2013, the Applicant wrote to the Advocates

Complaints Commission informing the Commission that the parties had held a meeting and agreed on accounts when the true position is that such a meeting had never taken place and no accounts had been agreed between them. Further, on 10th May, 2013, the Advocates Complaints Commission wrote to the Applicant to settle the matter amicably with the interested parties within Fourteen (14) days but the Applicant never responded to this letter after which the Advocates Complaints Commission forwarded the complaint against the Applicant to the Advocates Disciplinary Tribunal on 2nd July, 2013 as Law Society of Kenya Disciplinary Tribunal Cause Number 139 of 2013.

17. It was averred that the matter proceeded for hearing before the Advocates Disciplinary Tribunal on 11th August, 2014 and was set down for judgment and on 16th March, 2015 when the matter came up for judgment, the Applicant made an application to the Advocates Disciplinary Tribunal to arrest judgment from being read on the premise that the parties were negotiating and further informed the Tribunal that he had issued the interested parties with 2 cheques and the same should be allowed to clear before judgment was read. To the interested parties, however there were no negotiations between the Applicant and themselves. However the Applicant did issue them with two cheques dated 17th March, 2015 for the sum of Kshs. 1,479,692/= which was the principal sum owed by the Applicant. It was averred that judgment was therefore delivered on 13th April, 2015 when the Advocates Disciplinary Tribunal found the Applicant guilty and convicted him of the charge of withholding client's funds and on 23rd April, 2015 the Advocates Disciplinary Tribunal sent the Applicant a notice of the judgment issued on the 13th April, 2015 and when the matter came up for mitigation and sentencing on 20th July, 2015, the Applicant was strongly admonished and ordered to pay interest on the principal amount at 12% per annum and was further ordered to pay a fine of Kshs. 100,000/= to the Law Society of Kenya and costs of Kshs. 15,000/= to the Advocates Complaints Commission.

18. The interested parties disclosed that as regards the interest, the Advocates Disciplinary Tribunal ordered the Advocates Complaints Commission to compute interest from the date of receipt of each instalment from Blue Shield Insurance Company to the date the amounts were paid to the complainants and forward the figures to the Applicant for him to make payment within 30 days of the sentence. This, the Advocates Complaints Commission did in the sum of Kshs. 2,954,900/= and forwarded the same to the Applicant on 21st September, 2015 for his further action.

19. It was aver that the matter was once again mentioned before the Advocates Disciplinary Tribunal on 2nd November, 2015 for purposes of confirming compliance with the Tribunal's orders as to payment of interest and following the Applicant's non-compliance with the Tribunal orders, the Tribunal issued execution orders on the amount outstanding and once again wrote to the Applicant on 10th November, 2015 serving him with the computed interest.

20. To the interested parties, the payment of the sum of Kshs. 1,479,962/= by the Applicant did not in any way vacate, extinguish or defeat their right to the interest computed by the Advocates Complaints Commission pursuant to the orders of the Advocates Disciplinary Tribunal as the payment of the agreed principal amount of Kshs. 1,479,962/= by the Applicant was not in any way a precondition of the Applicant foregoing any claim or lien as alleged by the Applicant in his Application. To them, they only agreed with the Applicant on the payment of the principal sum of Kshs. 1,479,962/= and no any other agreement on settlement with the Applicant was reached.

21. The interested parties however denied the allegation that they had refused to settle any of the Applicant's claims averred that they have at all times insisted that he furnishes them with evidence of the alleged claims over the Estate of Livingstone Geitangi Karuri (deceased) which he has failed to do.

22. In direct response to the Applicant's averments the interested parties that the Applicant had not foregone his alleged lien over Motor Vehicle Registration Number KAE 694L and the business in the name of Lovito Enterprises as he had filed CMCC 7318 of 2015 seeking recovery of the same. The applicant has also filed his Bill of Costs against the interested parties in Miscellaneous Application Number 731 of 2013 arising from Nairobi HCCC No. 2642 of 1997 and the matter is yet to be determined

by the court. Further, the Applicant has also filed his Bill of Costs in Miscellaneous Application Number 732 of 2013 arising from Nairobi Succession Cause No. 2784 of 1995 (In the matter of the Estate of Livingstone Geitangi) which is yet to be determined by the court.

23. Whereas, it was admitted that the Applicant indeed made the 2nd Interested Party, **Peter Kamunde Ngunjiri**, to sign a letter dated 22nd May, 2015 alluding to a settlement which was later withdrawn and substituted with the one dated 25th May, 2015, the interested party averred that on 11th November, 2015, they once again wrote to the Law Society of Kenya reiterating their earlier position that they had not relinquished their claim on interest as computed by the Advocates Complaints Commission.

24. To the interested parties, the Advocates Disciplinary Tribunal did not in any way err in proceeding with Disciplinary Cause Number 139 of 2013 against the Applicant as the interested parties were not in any agreement to settle their complaint with the Applicant contrary to his assertions. To the interested parties, the Applicant was duly informed of the mention coming up before the Advocates Disciplinary Tribunal as evidenced by the notice sent out to his address by the Law Society of Kenya but failed to comply with the orders on payment of interest and the Tribunal on 2nd November, 2015 issued execution orders based on the said unpaid interest. In the interested parties' view, by filing this Application, the Applicant is simply shopping for a forum to continue dragging this matter and avoid complying with the lawful orders of the Advocates Disciplinary Tribunal since he is not disputing the amount of interest that is due to them.

Determinations

25. I have considered the application, the rivalling affidavits as well as the submissions made by the parties herein.

26. The applicant's case in a nutshell is that the Respondent ought not to have proceeded with a matter which had been compromised by the parties to the dispute before it.

27. The Respondent and the interested parties however contend that there was no such compromise as the purported consent which allegedly gave rise to the compromise was not ratified by the interested parties.

28. The parameters of judicial review were set out by the Court of Appeal in **Republic vs. Kenya National Examinations Council ex parte Gathenji & Others Civil Appeal No. 266 of 1996** as follows:

> **"Prohibition looks to the future so that if a tribunal were to announce in advance that it would consider itself not bound by the rules of natural justice the High Court would be obliged to prohibit it from acting contrary to the rules of natural justice. However, where a decision has been made, whether in excess or lack of jurisdiction or whether in violation of the rules of natural justice, an order of prohibition would not be efficacious against the decision so made. Prohibition cannot quash a decision which has already been made; it can only prevent the making of a contemplated decision...Prohibition is an order from the High Court directed to an inferior tribunal or body which forbids that tribunal or body to continue proceedings therein in excess of its jurisdiction or in contravention of the laws of the land. It lies, not only for excess of jurisdiction or absence of it but also for a departure from the rules of natural justice. It does not, however, lie to correct the course, practice or procedure of an inferior tribunal, or a wrong decision on the merits of the proceedings...The order of *mandamus* is of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right or no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual. The order must command no more than the party against whom the application is legally bound to perform. Where a general duty is imposed, a**

***mandamus* cannot require it to be done at once. Where a statute, which imposes a duty, leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is laid, a *mandamus* cannot command the duty in question to be carried out in a specific way...These principles mean that an order of *mandamus* compels the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed. An order of *mandamus* compels the performance of a duty imposed by statute where the person or body on whom the duty is imposed fails or refuses to perform the same but if the complaint is that the duty has been wrongfully performed i.e. that the duty has not been performed according to the law, then *mandamus* is wrong remedy to apply for because, like an order of prohibition, an order of *mandamus* cannot quash what has already been done...Only an order of *certiorari* can quash a decision already made and an order of *certiorari* will issue if the decision is without jurisdiction or in excess of jurisdiction, or where the rules of natural justice are not complied with or for such like reasons."**

29. The parties ought to appreciate the parameters of judicial review as opposed to an appeal. Judicial Review is a special supervisory jurisdiction which is different from both (1) ordinary (adversarial) litigation between private parties and (2) an appeal (rehearing) on the merits. The question is not whether the judge disagrees with what the public body has done, but whether there is some recognisable public law wrong that has been committed. Whereas private law proceedings involve the claimant asserting rights, judicial review represents the claimant invoking supervisory jurisdiction of the Court through proceedings brought nominally by the Republic. See **R vs. Traffic Commissioner for North Western Traffic Area ex parte Brake [1996] COD 248.**

30. Judicial review is a constitutional supervision of public authorities involving a challenge to the legal and procedural validity of the decision. It does not allow the court of review to examine the evidence with a view of forming its own view about the substantial merits of the case. It may be that the tribunal whose decision is being challenged has done something which it had no lawful authority to do. It may have abused or misused the authority which it had. It may have departed from procedures which either by statute or at common law as a matter of fairness it ought to have observed. As regards the decision itself it may be found to be perverse, or irrational, or grossly disproportionate to what was required. Or the decision may be found to be erroneous in respect of a legal deficiency, as for example, through the absence of evidence, or through a failure for any reason to take into account a relevant matter, or through taking into account an irrelevant matter, or through some misconstruction of the terms of the statutory provision which the decision maker is required to apply. While the evidence may have to be explored in order to see if the decision is vitiated by such legal deficiencies, it is perfectly clear that in a case of review, as distinct from an ordinary appeal, the court may not set about forming its own preferred view of the evidence. See **Reid vs. Secretary of State for Scotland [1999] 2 AC 512.**

31. Judicial review, it has been held time and again, is concerned not with private rights or the merits of the decision being challenged but with the decision making process. Its purpose is to ensure that the individual is given fair treatment by the authority to which he has been subjected. See R vs. Secretary of State for Education and Science ex parte Avon County Council (1991) 1 All ER 282, at P. 285.

32. The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment reaches on a matter which it is authorised by law to decide for itself a conclusion which is correct in the eyes of the court. See Chief Constable of the North Wales Police vs. Evans (1982) I WLR 1155.

33. I also associate myself with the expressions in **Republic vs. The Retirement Benefits Appeals Tribunal Ex Parte Augustine Juma & 8 others [2013] eKLR,** that:

"**...it must be remembered that the function of this court sitting in judicial review is not concerned with the merits of the decision…I will add that judicial review is not an appeal from a decision, but a review of the manner in which the decision was made. Once a body is**

vested with the power to do so something under the law, then there is room for it to make that decision, wrongly as it is rightly. That is why there is the appellate procedure to test and examine the substance of the decision itself. It follows, therefore, that the correctness or 'wrongness' or error in interpretation or application of the law is not appropriately tested in judicial review forum. In simple terms, a 'wrong' decision done within the law and in adherence to the correct procedure can seldom be said to be ultra vires as to attract remedy for the prerogative writs. The Court of Appeal in Kenya Pipeline Company Limited vs. Hyosung Ebara Company Limited & 2 Others, CA Civil Appeal 145 of 2011 [2012] eKLR expressed this view as follows; Moreover, where the proceedings are regular upon their face and the inferior tribunal has jurisdiction in the original narrow sense (that is, to say, it has power to adjudicate upon the dispute) and does not commit any of the errors which go to jurisdiction in the wider sense, the quashing order (certiorari) will not be ordinarily granted on the ground that its decision is considered to be wrong either because it misconceived a point of law or misconstrued a statute (except a misconstruction of a statute relating to its own jurisdiction) or that its decision is wrong in matters of fact or that it misdirects itself in some matter..."

34. To do otherwise would amount to this Court sitting on appeal on the decision made by the Respondent. In **Municipal Council of Mombasa vs. Republic & Umoja Consultants Ltd Civil Appeal No. 185 of 2001** was held:

> **"Judicial review is concerned with the decision making process, not with the merits of the decision itself: the Court would concern itself with such issues as to whether the decision makers had the jurisdiction, whether the persons affected by the decision were heard before it was made and whether in making the decision the decision maker took into account relevant matters or did take into account irrelevant matters…The court should not act as a Court of Appeal over the decider which would involve going into the merits of the decision itself-such as whether there was or there was not sufficient evidence to support the decision."**

35. In **Republic vs. Kenya Revenue Authority *Ex parte* Yaya Towers Limited [2008] eKLR** it was held that the remedy of judicial review is concerned with reviewing not the merits of the decision of which the application for judicial review is made, but the decision making process itself. It is important to remember in every case that the purpose of the remedy of Judicial Review is to ensure that the individual is given fair treatment by the authority to which he has been subjected and that it is no part of that purpose to substitute the opinion of the judiciary or of the individual judges for that of the authority constituted by law to decide the matter in question. Unless that restriction on the power of the court is observed, the court will, under the guise of preventing abuse of power, be itself, guilty of usurpation of power. See ***Halsbury's Laws of England 4th Edition Vol (1)(1) Para 60.***

36. This Court adopts the position in **Republic vs. Kenya Revenue Authority & another Ex-Parte Bear Africa (K) Limited** where **Majanja J**. quoting with approval the decision of **Githua J** in **Republic vs. Commissioner of Customs Services ex-parte Africa K-Link International Limited Nairobi HC Misc. JR No. 157 of 2012 [2012] eKLR** as follows:

> **"It must always be remembered that judicial review is concerned with the process a statutory body employs to reach its decision and not the merits of the decision itself. Once it has been established that a statutory body has made its decision within its jurisdiction following all the statutory procedures, unless the said decision is shown to be so unreasonable that it defies logic, the court cannot intervene to quash such a decision or to issue an order prohibiting its implementation since a judicial review court does not function as an appellate court. The court cannot substitute its own decision with that of the Respondent. Besides, the purpose of judicial review is to prevent statutory bodies from injuring the rights of citizens by either abusing their powers in the execution of their statutory duties and function or acting outside of their jurisdiction. Judicial review cannot be used to curtail or stop statutory bodies or public officers from the lawful exercise of power within their statutory mandates**."

37. In this case, in order to uphold the applicant's case, this Court would have to find that there in fact existed a binding contract between the parties. It is only the existence of such compromise that would oust the Respondent's jurisdiction to entertain the dispute before it as such a compromise would mean that there was nolonger a dispute for determination as long as the matter in dispute is one capable of being compromised by the parties. Whereas a compromise is a matter which the Respondent may in its discretion take into account, that cannot be the sole basis upon which this Court would prohibit the Respondent from enquiring into a complaint made before it. The Respondent is mandated to receive, hear and dispose of complaints brought against an advocate in the manner prescribed under the Act. Under section 60 of ***Advocates Act*** ("the Act"), the said Committee has the power to receive complaints of professional misconduct against an Advocate from any person. Since the Applicant herein is an Advocate, the Respondent has jurisdiction to entertain any complaints made against him in his professional capacity pursuant to section 55 of the Act**.** This power, as was appreciated by **Mumbi Ngugi, J** in **Ex Parte Kimaiyo Arap Sego, Misc. Appl. No. 1266 of 2007**:

> **"goes over and above dealing with complaints by individuals. The Committee has the mandate to ensure ethical and professional conduct by members of the Bar and section 60 of the Advocates Act empowers it to deal with complaints regarding professional misconduct, defined to include conduct incompatible with the status of an Advocate…I take the view that the Disciplinary Committee would have failed in its duty if it did not pursue the disciplinary proceedings against the applicant if the evidence before it showed that such conduct was unprofessional and dishonourable."**.

38. It therefore stands to reason that even in cases where the parties have compromised the claim between them, where the facts of the case disclose the existence of dishonourable or unprofessional conduct, the Respondent is not barred from investigating the same though the penalty if any may take into account the fact of such compromise.

39. In this case facts are highly disputed and this Court cannot without taking proper evidence and even subjecting the parties to cross-examination make a definite finding as to whether there was in fact a compromise between the parties herein.

40. A cursory glance at the letter dated 22nd May, 2015 which purportedly compromised the claim was written by one **Peter N. Kamunde**. Similarly there is on record a letter by the same person dated 22nd May, 2015 by which he confirmed that he authorized the applicant to pay Kshs 1,479,962/= to **Monica Geitangi** , the co-administrator, and that they had no further claims against the applicant. The contents of this letter were vide a letter dated 25th May, 2015 addressed to the Law Society of Kenya withdrawn. That letter was on the face of it copied to the applicant herein. **Peter Ngunjiri Kamunde** is one of the two administrators.

41. By another letter dated 11th November, 2015, the joint administrators affirmed their position that they had never relinquished their claim. The legal position of joint administrators was dealt with in **Willis Ochieng Odhiambo vs. Kenya Tourist Development Corporation & Another Kisumu HCCC No. 51 of 2007,** where the Court while citing with approval ***Lewin on Trusts***, 16th Edn. at 181; **Williams & Mortimer: *Executors, Administrators & Probate*** and **Bullen & Leake & Jacobs: *Precedents of Pleadings*, 13th Ed. at 373** held that in the case of co-trustees of a private trust, the office is a joint one and that where the administration of the trust is vested in co-trustees they all form as it were one collective trust and therefore must execute the duties of their offices in their joint capacity It was further held that although a strict definition of "trustee" does not apply to personal representatives who hold property upon trust for the estate, the legal responsibilities and liabilities of executors and administrators of estates are the same and are treated similarly where matters of procedure are in issue. It is therefore my view and I hold that in such circumstances a compromise of a cause of action must be by the administrators jointly and any purported compromise by only one when the other denies having authorised such compromise cannot stand.

42. Therefore based on the material before me, without making a definite determination as to the validity

of the alleged compromise, I cannot make a finding that based on the said compromise, the Respondent ought not to have proceeded with the disciplinary proceedings before it.

43. That said the other issues raised are better of being dealt with before an appellate Tribunal as opposed to a judicial review Court.

44. In the premises I find no merit in the Notice of Motion dated 21st December, 2015 which I hereby dismiss with costs.

It is so ordered.

Dated at Nairobi this 6th day of December, 2016

G V ODUNGA

JUDGE

Delivered in the presence of:

Mr Kimani for the applicant and holds brief for Miss Mwinzi for the Respondent

Mr Tarus for the 1st and 2nd interested parties

CA Mwangi