



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CIVIL SUIT NO.174 OF 2012

FRANCIS MADEGWA1ST PLAINTIFF

MULEMBE DISPENSING CHEMISTS

COMPANY LIMITED2ND PLAINTIFF

VERSUS

KENYA COMMERCIAL BANK LIMITEDDEFENDANT

RULING

Introduction

1. What is before me for determination in this matter is the Notice of Motion dated 20/02/2014 by which the Defendant prays that the Plaintiff and subsequent pleadings as against the applicant be struck out with costs. The application is premised on grounds that:-
 - a. The suit against the Defendant has been filed by a person not competent to act as an advocate.
 - b. At the time of filing the Plaintiff and subsequent pleadings Laban Akula Anziya (of Anziya & Company Advocates) the Plaintiff's advocate did not have a valid practicing certificate to enable him appear and practice before this Honourable Court.
 - c. The Plaintiff and the documents drawn and filed by the Plaintiff's Advocate as against the Defendant are incompetent and fatally defective.
 - d. The suit against the Defendant is therefore an abuse of the process of this Honourable Court.

The application is also premised on the affidavit sworn by David Rony Onyango Owira on 20/02/2014. The deponent reiterates the contents of the grounds set out on the face of the application and prays that the Defendant's application be allowed.

2. Though the application was duly served upon the Plaintiffs through his Advocate Laban Akula Anziya who is on record, no replying papers have ever been filed. The application therefore remains uncontested and when it came up for hearing before me on 16/06/2015, it proceeded ex parte.

The Law

3. The Defendant's application is pivoted on the provisions of Section 9 of The Advocates Act, Cap

16 of the Laws of Kenya. The Section prohibits persons who are not qualified advocates to act as such. The Section provides as follows:-

“9. Subject to this Act, no person shall be qualified to act as an Advocate unless:-

- a. he has been admitted as an advocate; and
- b. his name is for the time being on the roll, and
- c. he has in force a practicing certificate;
- d. deleted by Act No.9 of 2000, Section 57

It is imperative therefore that any person who purports to act as an advocate must not only be one who has been admitted as an advocate but must also have his name on the Roll of Advocates in addition to having in force a valid practicing certificate in his/her name. This provision is, in my humble view intended to protect and preserve the name and integrity of the legal profession which has of late been infiltrated by quacks from all walks of life who and act as advocates. A person who has been admitted as an advocate but whose name is for the time being not on the roll cannot practice as such advocate nor can he practice as such advocate if he/she does not have a valid practicing certificate.

4. Many advocates who do not meet the requirements of Section 9 of the Advocates Act and have attempted to draw pleadings for their clients and appeared before Courts have been stopped from proceeding further the moment their illegibility has been brought to the attention of the Courts. Such was the situation in cases such as **National Bank of Kenya Ltd –vs- Wilson Ndolo Ayah [2009]e KLR** and **Abdul Aziz Juma –vs- Nikisahi Investment & 2 others [2013] e KLR**. In both of these authorities, which were cited by Counsel for the Defendant, it was made clear that pleadings drawn and signed by an advocate who has no practicing certificate at the time, are incompetent pleadings, and must be struck out. Similarly it was held in those cases that the provisions of Section 9 of the Advocates Act are unambiguous and mandatory in nature, and any person who contravenes those provisions, must, during the period of such contravention face the axe. In the case of **Obura –vs- Koome [2001] EA 175** an authority that was referred to by J.M. Mutungi J at page 3 in the case of **Abdul Aziz Juma –vs- Nikisahi Investment & 2 others** (supra) The Court of Appeal, while considering a similar issue states as follows:-

“the facts of this case are governed clearly by the provisions of the Advocates Act and not by the common law in England. The provisions of Section 9 are unambiguous and mandatory and the principles of common law do not apply as the jurisdiction of this Court is to be exercised in conformity with the Constitution and subject thereto, all other written lawsIn the circumstances, the memorandum of appeal is incompetent having been signed by an advocate who is not entitled to appear and conduct any matter in this Court or any other Court.”

Anaysis and Findings

5. In the present case, it is not denied that the Plaintiff and subsequent pleadings herein were drawn and signed by Laban Akula Anziya of Anziya & Company Advocates. It is also not denied that at the time of drawing and signing the Plaintiff and subsequent pleadings the said Laban Akula Anziya did not have a valid practicing certificate. Evidence to that effect was annexed to the Supporting Affidavit of David Ronny Onyango Owira in the form of a letter authored by the Law Society of Kenya on 06/09/2012(see annexure “DR00-2”). At paragraph 2 of the said letter the Law Society of Kenya writes:-

“We wish to confirm that according [to our records] Mr Laban Akula Anziya advocate does not hold a practicing certificate for the years 2012 and 2013. He last held one in the year 2011 having paid for it on the 31st March 2011.”

6. Having filed no response to the Defendant’s instant application, Mr. Anziya did not contest the

above facts extracted from the records of the Law Society of Kenya as at 06/09/2012. The Plaintiff herein together with the Notice of Motion seeking injunctive relief on behalf of the Plaintiff were filed on 19/07/2012 when Mr. Anziya did not have a valid practicing certificate in accordance with the provisions of Section 9 of the Advocates Act, Cap 16 Laws of Kenya.

Conclusion

7. In the circumstances, and it being confirmed that Mr. Laban Akula Anziya did not have in force a practicing certificate as at 19/07/2012, all the pleadings drawn and filed by the said Laban Akula Anziya on behalf of the Plaintiff/Respondent were and are incompetent and are accordingly struck out with costs to the Defendant.

8. Orders accordingly.

Ruling, delivered, dated and signed in open Court of Kakamega this 14th day of October 2015.

RUTH N. SITATI

JUDGE

In the presence of:-

Mukele Moni (absent)for Defendant/Applicant

Mr. Anziya (present) for Plaintiff/Respondent

Mr. Solomon - Court Assistant