



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA
MISCELLANEOUS APPLICATION NO. 7 OF 2014

JOSEPH NJOKA & 7 OTHERS.....APPLICANTS

-VERSUS-

ROSE MUTITU GACHOKI.....RESPONDENT/APPLICANT

RULING

1. **ROSE MUTITU GACHOKI**, the applicant herein has moved this Court vide a Notice of Motion dated 19th September, 2014 for the following orders:

- i. *That the applicants/respondent's application for leave to appeal out of time dated 20th February, 2014 be struck out with costs.*
- ii. *That the applicant/respondent be condemned to pay costs of this application.*

2. The application was grounded upon the following grounds namely:

- a. *That the advocate who drew, signed, and filed the impugned application did not have a practicing certificate rendering the application incompetent and unmaintainable in court.*
- b. *That Law Society of Kenya confirmed in writing that Mr. Ikahu Nganga who drew and signed the said notice of motion did not have a practicing certificate for the year 2013 and 2014.*

3. The application before me is unopposed as the respondents did not file any response despite evidence of service indicating that they were served more than a year ago that is on 22nd September, 2014. I have however, considered the application on its merit. I have in particular considered a letter from Deputy Secretary, Law Society of Kenya dated 1st August, 2014 and annexed as annexure Rma in the affidavit in support of the application before me. Clearly the named advocate who drew and signed the application dated 20th February, 2014, Mr. Ikahu Mark Nganga appears not to have taken out his practicing certificate for the years 2013 and 2014 going by the said annexure which has not been controverted.

4. **Section 9** of the **Advocates Act (Cap 16)** clearly stipulates that for one to practice as an advocate he should demonstrate the following:

1. That he has been admitted as an advocate.
2. That his name for the time being is on the roll of advocates.
3. That he has in force a practicing certificate.
4. That in addition, he has in force an annual licence.

Section 34 of **The Advocates Act** is clear on the gravity of sanction for one who practices without valid

practicing certificate. It is an offence punishable by law to practice law without a certificate and one is liable to pay a fine of Kshs.50,000/- as per **Section 85** of the said Act. The law clearly abhors advocates who practice law without taking out their annual practicing certificate as required.

5. This Court finds that the application dated 20th February, 2014 cannot be salvaged. It was drawn and signed by unqualified person. It is incompetent and untenable in law. The same is struck out with costs to be paid by Ikahu Nganga personally because he was better placed to know the consequences of his actions. The applicants may not have been seized with the information regarding their counsel's status in so far as taking out his annual practicing certificate is concerned. The application dated 19th September, 2014 is merited and allowed as prayed.

Dated and delivered at Kerugoya this 7th day of October, 2015.

R. K. LIMO

JUDGE

7.10.2015

At 2.30 p.m.

Muchiri for the applicant

No appearance for Respondent

COURT: Ruling signed, dated and delivered in the open court in the presence of Mr. Muchiri for the applicant and in the absence of the respondent.

R. K. LIMO

JUDGE