



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

CIVIL CASE NO. 109 OF 2011

**MUKESHKUMAR KANTILAL PATEL.....
PLAINTIFF/RESPONDENT**

VERSUS

CHARLES LANGAT DEFENDANT/APPLICANT

RULING

1. The Defendant/Applicant, **Charles Langat** filed a Notice of Motion dated **1st November, 2012** seeking the following orders:-
 - 1) spent
 - 2) spent
 3. That the **Plaint** dated **23rd November, 2011** filed herein on even date and all other subsequent procedures, pleadings, documents or papers filed herein by the firm of **G.M. Maengwe & Company Advocates** on behalf of the **Plaintiff/Respondent** (hereinafter referred to as “**the Plaintiff**”) be struck out;
 4. That in the result, the **Plaintiff's** suit against the defendant be dismissed with costs to the defendant;
 5. That the defendant be at liberty to apply for such other and/or further orders and /or directions as the **Honorable Court** may deem fit and just to grant;
 - 6) That the costs of the application be provided for.
2. The application is supported by the grounds appearing on the face of it as well as the Supporting Affidavit sworn by **Charles Langat** in which he depones that the plaintiff/respondent's pleadings filed by the firm of **G.M. Maengwe & and Company Advocates** should be struck out on the ground that **Mr. George Morara Maengwe**, Counsel for the plaintiff/respondent did not have a practising certificate as at the time of drawing, signing and filing of the said pleadings. Consequently, the entire suit by the plaintiff/respondent is void *ab initio* and should be struck out.
3. The application is opposed. The plaintiff/respondent, **Mukeshkumar Kantilal Patel**, filed a Replying Affidavit sworn on **13th November, 2012** in which he deponed that the orders sought by the applicant are unattainable as there is a judgment in place that has not been set aside; that it

- would be draconian to strike out pleadings where the circumstances are unclear; that the application is bad in law, incurably defective, incompetent and the same be dismissed with costs.
4. The application was argued before me on **26th November, 2013** by the Learned Counsel, **Mr. Odongo** for the Defendant/Applicant and **Mr. Mutai** for the plaintiff/Respondents.
 5. **Mr. Odongo**, learned counsel for the applicant submitted that as at the time of filing the suit, Counsel for the plaintiff did not have a current practicing certificate in contravention of **section 9, 31 and 34** of the **Advocates Act**. Further, he relied on the decisions in **National Bank of Kenya vs Wilson Ndolo Ayah (2009) eKLR**, **Kenya Power and Lightitng Company Limited vs Chris Mahinda t/a Nyeri Trade Centre (2005) eKLR** and **Geoffrey Orao-Obura vs Martha Karambu Koome, Civil Appeal No. 146 of 2000** to submit to the court that the plaintiff suit and pleadings should be struck out. He urged the court to allow the application as prayed.
 6. **Mr. Mutai**, learned counsel for the respondent in opposing the application relied on the Replying affidavit dated **13th November, 2012**. It was his submission that equity helps the vigilant and the application should have been filed and transversed in the defence; According to counsel, the orders sought are unattainable as judgment has been entered.
 7. **Section 9** of the **Advocates Act, Cap 16**, Laws of Kenya 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; 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, S. 57**

and for the purposes of this Act a practicing certificate shall be deemed not to be in force at anytime while he is suspended by virtue of Section 27 or by an order under Section 60 (4).

8. The wording of the above section is to the effect that an advocate must satisfy all three conditions before acting for a party. The wording is mandatory and is unambiguous.
9. As rightly submitted by counsel for the applicant, the courts have been called upon to make pronouncements in the circumstances similar to the instant case. The courts have held pleadings drawn by an advocate who does not hold a current practicing Certificate to be incompetent and have proceeded to strike out such pleadings.
10. In **Oburu vs Koome [2001] 1 EA 175**, the Court of Appeal while considering the issue stated:

The facts of this case are governed clearly by the provisions of the Advocates Act not 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 laws... in 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 in any other court.”

11. In **National Bank of Kenya Ltd vs Wilson Ndolo Ayah [2009] eKLR** the Court of Appeal in its analysis of the rationale for the invalidation of acts done by unqualified Advocates stated as follows:

“It is public policy that citizens obey the law of the land. Likewise is good policy that courts enforce the law and avoid perpetuating acts of illegality. It can effectively do so if acts done in pursuance of an illegality are deemed as being invalid....However it should not be lost sight of the fact that the innocent party has remedies against the guilty party to which he may have recourse. For that reason it should not be argued that invalidating

acts done by unqualified advocate will leave them without any assistance of the law.”

12. In the present matter, I am satisfied that **Mr. Maengwe**, Advocate, who drew, signed and filed the plaint and an application for the plaintiffs lacked the capacity to act as an advocate and the documents he drew are incompetent. **Section 34** of the **Advocates Act** provides such acts that unqualified person cannot do. Those acts include the drawing of pleadings. A letter dated **1st August, 2012** (“CL 2”) from the Law Society of Kenya is sufficient evidence to show that **Mr. Maengwe** did not have a practicing Certificate as at the time of drawing, signing and filing of this suit.

13. I accordingly allow the application dated **1st November, 2012** with costs and further strike out the plaint dated **23rd November, 2011** and subsequent pleadings.

14. The costs of the suit are awarded to the Applicant.

Dated and delivered at Kericho this 11th day of February 2014.

L N WAITHAKA

JUDGE

Delivered by J K Sergon Judge on behalf of Lady Justice L N Waitthaka.